

UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE SECOND SESSION OF THE
ONE-HUNDREDTH CONGRESS
OF THE UNITED STATES OF AMERICA

1988

AND

PROCLAMATIONS

VOLUME 102

IN FIVE PARTS

PART 4

PUBLIC LAWS 100-591 THROUGH 100-676



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THE ONE-HUNDREDTH CONGRESS OF THE UNITED STATES
SECOND SESSION, 1988

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PUBLIC LAWS

(CONTINUED)

Public Law 100-591
100th Congress

An Act

To amend the Federal Aviation Act of 1958 relating to aviation research.

Nov. 3, 1988

[H.R. 4686]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Aviation Safety
Research Act of
1988.

49 USC app.
1301 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Aviation Safety Research Act of 1988”.

SEC. 2. AVIATION MAINTENANCE AND FIRE SAFETY RESEARCH.

Section 312(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353(b)) is amended by inserting after the first sentence the following: “The Administrator shall undertake or supervise research to develop technologies and to conduct data analyses for predicting the effects of aircraft design, maintenance, testing, wear, and fatigue on the life of aircraft and on air safety, to develop methods of analyzing and improving aircraft maintenance technology and practices (including nondestructive evaluation of aircraft structures), to assess the fire and smoke resistance of aircraft materials, to develop improved fire and smoke resistant materials for aircraft interiors, to develop and improve fire and smoke containment systems for in-flight aircraft fires, and to develop advanced aircraft fuels with low flammability and technologies for containment of aircraft fuels for the purpose of minimizing post-crash fire hazards.”

SEC. 3. RESEARCH ON RELATIONSHIP BETWEEN HUMAN FACTORS AND AIR SAFETY AND ON DYNAMIC SIMULATION MODELING.

Section 312(c) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353(c)) is amended by inserting after the first sentence the following: “The Administrator shall undertake or supervise research to develop a better understanding of the relationship between human factors and aviation accidents and between human factors and air safety, to enhance air traffic controller and mechanic and flight crew performance, to develop a human-factor analysis of the hazards associated with new technologies to be used by air traffic controllers, mechanics, and flight crews, and to identify innovative and effective corrective measures for human errors which adversely affect air safety. The Administrator shall undertake or supervise a research program to develop dynamic simulation models of the air traffic control system and airport design and operating procedures which will provide analytical technology for predicting airport and air traffic control safety and capacity problems, for evaluating planned research projects, and for testing proposed revisions in airport and air traffic control operations programs.”

SEC. 4. RESEARCH PLAN AND REPORTS.

(a) IN GENERAL.—Section 312 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353) is amended by adding at the end the following new subsection:

"RESEARCH PLAN AND REPORTS

"(d)(1) The Administrator shall prepare, review, revise, publish, and transmit a national aviation research plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than the date of the submission to Congress of the President's budget for fiscal year 1990, and for each fiscal year thereafter. The plan shall describe, for a 15-year period, the research, engineering, and development considered by the Administrator necessary to ensure the continued capacity, safety, and efficiency of aviation in the United States, considering emerging technologies and forecasted needs of civil aeronautics, and provide the highest degree of safety in air travel. The plan shall cover all research conducted under this section and section 316 of this Act and shall identify complementary and coordinated research efforts conducted by the National Aeronautics and Space Administration with funds specifically appropriated to such Administration. In addition, for projects for which the Administrator anticipates requesting funding, such plan shall set forth—

"(A) for the first 2 years the plan, detailed annual estimates of the schedule, cost, and manpower levels for each research project, including a description of the scope and content of each major contract, grant, or interagency agreement;

"(B) for the 3d, 4th, and 5th years of the plan, estimates of the total cost of each major project for such years and any additional major research projects which may be required to meet long-term objectives and which may have significant impact on future funding requirements;

"(C) for the 6th and subsequent years of the plan, the long-term objectives which the Administrator considers to be necessary to ensure that aviation safety will be given the highest priority; and

"(D) details of a program to disseminate to the private sector the results of aviation research conducted by the Administrator, including any new technologies developed.

"(2) Subject to section 316(d)(2) of this Act and the regulations prescribed to carry out such section, the Administrator shall report annually, beginning with the date of transmission of the first aviation research plan as required by paragraph (1), to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives on the accomplishments of the research completed during the preceding fiscal year. The report shall be transmitted together with each plan transmittal required under paragraph (1) and shall be organized so as to allow comparison with the plan in effect for such year under this subsection."

(b) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of such Act which appears under the heading:

"Sec. 312. Development planning."

is amended by adding at the end the following:

"(d) Research plan and reports.

"(e) Civil aeromedical research.

"(f) Research advisory committee."

SEC. 5. CIVIL AEROMEDICAL RESEARCH.

(a) **ESTABLISHMENT OF CIVIL AEROMEDICAL INSTITUTE.**—Section 106 of title 49, United States Code, relating to the Federal Aviation Administration, is amended by adding at the end thereof the following new subsection:

“(j) There is established within the Federal Aviation Administration an institute to conduct civil aeromedical research under section 312(e) of the Federal Aviation Act of 1958. Such institute shall be known as the ‘Civil Aeromedical Institute’. Research conducted by the institute should take appropriate advantage of capabilities of other government agencies, universities, or the private sector.”.

(b) **CIVIL AEROMEDICAL RESEARCH.**—Section 312 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353), as amended by this Act, is further amended by adding at the end the following new subsection:

“**CIVIL AEROMEDICAL RESEARCH**

“(e) The Civil Aeromedical Institute established by section 106(j) of title 49, United States Code, is authorized—

“(1) to conduct civil aeromedical research, including, but not limited to, research related to—

“(A) protection and survival of aircraft occupants;

“(B) medical accident investigation and airman medical certification;

“(C) toxicology and the effects of drugs on human performance;

“(D) the impact of disease and disability on human performance;

“(E) vision and its relationship to human performance and equipment design;

“(F) human factors of flight crews, air traffic controllers, mechanics, inspectors, airway facility technicians, and other persons involved in the operation and maintenance of aircraft and air traffic control equipment; and

“(G) agency work force optimization, including training, equipment design, reduction of errors, and identification of candidate tasks for automation;

“(2) to make comments to the Administrator on human factors aspects of proposed air safety rules;

“(3) to make comments to the Administrator on human factors aspects of proposed training programs, equipment requirements, standards, and procedures for aviation personnel;

“(4) to advise, assist, and represent the Federal Aviation Administration in the human factors aspects of joint projects between such Administration and the National Aeronautics and Space Administration, other Government agencies, industry, and foreign governments; and

“(5) to provide medical consultation services to the Administrator with respect to medical certification of airmen.”.

SEC. 6. ADVISORY COMMITTEE.

Section 312 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353), as amended by this Act, is further amended by adding at the end the following new subsection:

“RESEARCH ADVISORY COMMITTEE

“(f)(1) Not later than 180 days after the date of the enactment of this subsection, the Administrator shall establish in the Federal Aviation Administration a research advisory committee.

“(2) The advisory committee shall provide advice and recommendations to the Administrator regarding needs, objectives, plans, approaches, content, and accomplishments with respect to the aviation research program carried out under this section and section 316. The committee shall also assist in assuring that such research is coordinated with similar research being conducted outside of the Federal Aviation Administration.

“(3) The advisory committee shall be composed of not more than 20 members appointed by the Administrator from among persons who are not employees of the Federal Aviation Administration and who are specially qualified to serve on the committee by virtue of their education, training, or experience. The Administrator in appointing the members of the committee shall ensure that universities, corporations, associations, consumers, and other government agencies are represented.

“(4) The chairman of the advisory committee shall be designated by the Administrator.

“(5) Members of the advisory committee shall serve without pay; except that the Administrator may allow any member, while attending meetings of the advisory committee or a subordinate committee, travel or transportation expenses in accordance with section 5703 of title 5, United States Code.

“(6) The Administrator shall provide support staff for the advisory committee. The Administrator may establish subordinate committees to the advisory committee to provide advice on specific areas of research conducted under this section and section 316.

“(7) Upon request of the advisory committee, the Administrator shall provide such information, administrative services, and supplies as the Administrator determines are necessary for the advisory committee to carry out its functions.

“(8) Section 14 of the Federal Advisory Committee Act shall not apply to the advisory committee established under this subsection.

“(9)(A) Not more than one-tenth of 1 percent of the funds made available to carry out research under this section and section 316 for fiscal years beginning after September 30, 1988, may be used by the Administrator to carry out this subsection.

“(B) No limitation on the amount of funds available for obligation by or for the advisory committee shall be applicable with respect to the funds made available to carry out this subsection.”.

SEC. 7. FUNDING.

(a) FISCAL YEAR 1989.—Section 506(b)(2)(B) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(b)(2)(B)) is amended—

(1) in clause (vii), by striking “; and” and inserting in lieu thereof a comma; and

(2) by adding at the end, flush with the margin, the following: “except that not less than 15 percent of the amount appropriated pursuant to this subparagraph shall be for long-term research projects; and”.

(b) FISCAL YEAR 1990.—Section 506(b)(2)(C) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(b)(2)(C)) is amended to read as follows:

“(C) for fiscal year 1990—

“(i) \$25,000,000 solely for human factors research projects and activities; and

“(ii) \$221,530,000 for all other research projects and activities,

except that not less than 15 percent of the amount appropriated pursuant to this subparagraph shall be for long-term research projects.”.

(c) DEFINITION.—Section 506(b)(2) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(b)(2)) is amended by adding at the end the following:

“As used in this paragraph, the term ‘long-term research project’ means a research project which is identified as a discrete project in the aviation research plan required by section 312(d)(1) of the Federal Aviation Act of 1958 and which is unlikely to result in a final rulemaking action within 5 years, or in initial installation of operational equipment within 10 years, after the date of the commencement of such project.”.

SEC. 8. AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.

49 USC app.
1353 note.

(a) FINDINGS.—The Congress finds as follows:

(1) Research is needed to establish a more scientific approach for—

(A) identifying future staffing requirements for the air traffic control system; and

(B) developing tools needed for meeting those requirements.

(2) The Federal Aviation Administration and the National Aeronautics and Space Administration each have unique expertise and facilities for conducting research into the man-machine interface problems associated with a highly automated air traffic control system.

(b) STUDY ON INCREASED AUTOMATION.—

(1) IN GENERAL.—In order to develop the tools necessary for establishing appropriate selection criteria and training methodologies for the next generation of air traffic controllers, the Administrator of the Federal Aviation Administration shall conduct research to study the effect of automation on the performance of the next generation of air traffic controllers and the air traffic control system.

(2) CONTENT.—Research conducted under paragraph (1) shall include investigation of the following:

(A) Methods for improving and accelerating future air traffic controller training through the application of advanced training techniques, including use of simulation technology.

(B) The role of future automation in the air traffic control system and its physical and psychological effects on air traffic controllers.

(C) The attributes and aptitudes needed to function well in a highly automated air traffic control system, and development of appropriate testing methods for identifying individuals possessing those attributes and aptitudes.

(D) Innovative methods for training potential air traffic controllers to enhance the benefits of automation and maximize the effectiveness of the air traffic control system.

(E) New technologies and procedures for exploiting automated communication systems, including Mode S Transponders, to improve information transfers between air traffic controllers and aircraft pilots.

(3) **REPORT.**—Not later than 6 months after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall report to the Congress the Administrator's plans for conducting research under this section.

(c) **AGREEMENT WITH ADMINISTRATOR OF NASA.**—

(1) **IN GENERAL.**—The Administrator of the Federal Aviation Administration may enter into an agreement with the Administrator of the National Aeronautics and Space Administration for use of their unique human factor facilities and expertise in conducting research activities to study the human factor aspects of the highly automated environment for the next generation of air traffic controllers.

(2) **CONTENT.**—Research under this section shall include investigation of the following:

(A) Human perceptual capabilities and the effect of computer-aided decisionmaking on the workload and performance of air traffic controllers.

(B) Information management techniques for advanced air traffic control display systems.

(C) Air traffic controller workload and performance measures, including development of predictive models.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—For conducting research under this section there are authorized to be appropriated, from amounts in the Airport and Airway Trust Fund which are available for research and development, such sums as may be necessary.

SEC. 9. CRASHWORTHY FUSELAGE FUEL TANKS AND FUEL LINES.

(a) **ADVANCE NOTICE OF PROPOSED RULEMAKING.**—In order to ensure greater air safety to passengers of air carriers and reduce the incidence of post-crash fires, the Administrator of the Federal Aviation Administration shall, within 90 days following the date of enactment of this Act, issue an advance notice of proposed rulemaking to determine the feasibility of installing in all air carrier aircraft crashworthy fuselage fuel tanks and fuselage fuel lines which are rupture resistant and which disconnect and seal in the event of an accident.

(b) **RESEARCH.**—Within 60 days following the date of enactment of this Act, the Administrator shall undertake or supervise research to

develop technologies which will prevent the spraying or free flow or significant quantities of fuel after an air crash or develop fuels and fuel additives which can reduce rapid fuel dispersal and combustibility, or both.

Approved November 3, 1988.

LEGISLATIVE HISTORY—H.R. 4686 (S. 2746):

HOUSE REPORTS: No. 100-894 (Comm. on Science, Space, and Technology).

SENATE REPORTS: No. 100-584 accompanying S. 2746 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 20, considered and passed House.

Oct. 20, considered and passed Senate, amended.

Oct. 21, House concurred in Senate amendment.

Joint Resolution

Nov. 3, 1988
[H.J. Res. 446]

Designating October 30 through November 5, 1988, as "National Jukebox Week".

Whereas the jukebox has played an important role in the musical and artistic heritage of America;

Whereas the jukebox holds a unique place in the annals of American music;

Whereas the jukebox has contributed to the development of the Nation's contemporary culture;

Whereas the jukebox has brought widespread entertainment to millions of Americans over many generations; and

Whereas the jukebox is about to celebrate its 100th anniversary:
Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 30 through November 5, 1988, is designated as "National Jukebox Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate programs, ceremonies, and activities.

Approved November 3, 1988.

LEGISLATIVE HISTORY—H.J. Res. 446:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 21, considered and passed House and Senate.

Public Law 100-593
100th Congress

Joint Resolution

designating November 28 through December 2, 1988, as "Vocational-Technical Education Week".

Nov. 3, 1988

[H.J. Res. 572]

Whereas vocational education prepares the Nation's work force by providing students with basic academic and occupational skills; whereas vocational education stresses the importance of positive work attitudes and values;

Whereas vocational education builds the leadership skills of students by encouraging them to participate in student organizations;

Whereas vocational education stimulates the growth and vitality of the Nation's businesses and industries by preparing workers for the majority of occupations forecasted to experience the largest and fastest growth in the next decade;

Whereas vocational education encourages entrepreneurship among students through units of study and courses designed to prepare them to start and manage their own businesses;

Whereas a strong vocational education program planned and carried out by trained vocational educators is vital to the future economic development of the Nation and to the well-being of its citizens;

Whereas the Future Business Leaders of America, the Future Homemakers of America and Home Economics Related Occupations, the Future Farmers of America, the Distributive Education Clubs of America, the Vocational Industrial Clubs of America, the American Industrial Arts Student Association, the Health Occupation Students of America, the National Association of State Councils on Vocational Education, and the American Vocational Association have joined efforts to give added definition to vocational education;

Whereas the American Vocational Association, the major professional association for the field of vocational education, will convene its annual convention in St. Louis, Missouri, on December 2, 1988; and

Whereas the planned theme for Vocational-Technical Education Week is "Vocational Education: Building Tomorrow's Leaders": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 28 through December 2, 1988, is designated as "Vocational-Technical Education Week", and the President is authorized and requested to issue a

proclamation calling upon the people of the United States to observe such period with appropriate programs, ceremonies, and activities.

Approved November 3, 1988.

LEGISLATIVE HISTORY—H.J. Res. 572 (S.J. Res. 363):

CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 16, considered and passed House.

Oct. 7, S.J. Res. 363 considered and passed Senate.

Oct. 19, H.J. Res. 572 considered and passed Senate.

Public Law 100-594
100th Congress

An Act

to amend the Communications Act of 1934 to provide authorization of appropriations for the Federal Communications Commission, and for other purposes.

Nov. 3, 1988

[S. 1048]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the “Federal Communications Commission Authorization Act of 1988”.

Federal
Communications
Commission
Authorization
Act of 1988.
47 USC 609 note.

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. (a) Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 6. There are authorized to be appropriated for the administration of this Act by the Commission \$107,250,000 for fiscal year 1988 and \$109,250,000 for fiscal year 1989, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1988 and 1989.”.

(b) The amendment made by subsection (a) of this section shall apply with respect to fiscal years beginning after September 30, 1987.

47 USC 156 note.

TRAVEL REIMBURSEMENT PROGRAM

SEC. 3. Section 4(g)(2)(D) of the Communications Act of 1934 (47 U.S.C. 154(g)(2)(D)) is amended by striking “1987” and inserting in lieu thereof “1989”.

ANNUAL MANAGEMENT REPORT

SEC. 4. Subsection (g) of section 5 of the Communications Act of 1934 (47 U.S.C. 155) is repealed.

FEE SCHEDULE

SEC. 5. Section 8(b)(1) of the Communications Act (47 U.S.C. 158(b)(1)) is amended by striking “the date of enactment of this Act” the first time it appears and inserting in lieu thereof “April 1, 1987.”.

OLDER AMERICANS PROGRAM

SEC. 6. (a) During fiscal years 1988 and 1989, the Federal Communications Commission is authorized to make grants to, or enter into cooperative agreements with, private nonprofit organizations to

Grants.
Contracts.
47 USC 154 note.

utilize the talents of older Americans in programs authorized by other provisions of law administered by the Commission (and consistent with such provisions of law) in providing technical and administrative assistance for projects related to the implementation, promotion, or enforcement of the regulations of the Commission.

(b) Prior to awarding any grant or entering into any agreement under subsection (a), the Office of the Managing Director of the Commission shall certify to the Commission that such grant or agreement will not—

(1) result in the displacement of individuals currently employed by the Commission;

(2) result in the employment of any individual when any other individual is on layoff status from the same or a substantially equivalent job within the jurisdiction of the Commission;

(3) result in filling a position prior to (A) publicly announcing the availability of such position, and (B) attempting to fill such position in accordance with regular employment procedures; or

(4) affect existing contracts for services.

(c) Participants in any program under a grant or cooperative agreement pursuant to this section shall—

(1) execute a signed statement with the Commission in which such participants certify that they will adhere to the standards of conduct prescribed for regular employees of the Commission, as set forth in part 19 of title 47, Code of Federal Regulations; and

(2) execute a confidential statement of employment and financial interest (Federal Communications Commission Form A-54) prior to commencement of work under the program.

Failure to comply with the terms of the signed statement described in paragraph (1) shall result in termination of the individual under the grant or agreement.

(d) Nothing in this section shall be construed to permit employment of any such participant in any decisionmaking or policy-making position.

(e) Grants or agreements under this section shall be subject to prior appropriation Acts.

CONGRESSIONAL COMMUNICATIONS

SEC. 7. (a) The prohibition in section 1.1203(a) of title 47, Code of Federal Regulations, shall not apply to any of the types of presentations listed in section 1.1204(b) of such title nor to any presentation made by a member or officer of Congress, or a staff person of any such member or officer, acting in his or her official capacity, in—

(1) any non-restricted proceeding under section 1.1206(b) of such title;

(2) any exempt proceeding under section 1.1204(a)(2) of such title not involving the allotment of a channel in the radio broadcast or television broadcast services; or

(3) any exempt proceeding under section 1.1204 (a)(4) through (a)(6) of such title.

(b) Each reference in subsection (a) of this section to a provision of title 47, Code of Federal Regulations, applies to such provision as in effect on the date of enactment of this Act. No subsequent amendment of the rules or regulations in such title shall have the effect of prohibiting any presentation of the kind that would be permitted

der subsection (a) of this section on the date of enactment of this act.

TARIFF REVIEW

SEC. 8. (a) Section 5(c)(1) of the Communications Act of 1934 (47 U.S.C. 155(c)(1)) is amended, in the first sentence, by inserting immediately after "this subsection" the following: "and except any provision referred to in sections 204(a)(2), 208(b), and 405(b)".

(b) Section 204(a) of the Communications Act of 1934 (47 U.S.C. 204(a)) is amended—

(1) by inserting "(1)" immediately before "Whenever"; and

(2) by adding at the end the following new paragraph:
"(2)(A) Except as provided in subparagraph (B), the Commission shall, with respect to any hearing under this section, issue an order concluding such hearing within 12 months after the date that the charge, classification, regulation, or practice subject to the hearing becomes effective, or within 15 months after such date if the hearing raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

"(B) The Commission shall, with respect to any such hearing initiated prior to the date of enactment of this paragraph, issue an order concluding the hearing not later than 12 months after such date of enactment.

"(C) Any order concluding a hearing under this section shall be a final order and may be appealed under section 402(a)."

(c) Section 208 of the Communications Act of 1934 (47 U.S.C. 208) is amended—

(1) by redesignating the existing text as subsection (a); and

(2) by adding at the end the following new subsection:

"(b)(1) Except as provided in paragraph (2), the Commission shall, with respect to any investigation under this section of the lawfulness of a charge, classification, regulation, or practice, issue an order concluding such investigation within 12 months after the date on which the complaint was filed, or within 15 months after such date if the investigation raises questions of fact of such extraordinary complexity that the questions cannot be resolved within 12 months.

"(2) The Commission shall, with respect to any such investigation initiated prior to the date of enactment of this subsection, issue an order concluding the investigation not later than 12 months after such date of enactment.

"(3) Any order concluding an investigation under paragraph (1) or (2) shall be a final order and may be appealed under section 402(a)."

(d) Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended—

(1) by redesignating the existing text as subsection (a);

(2) in subsection (a), as so redesignated, by striking "section 5(d)(1)" each place it appears and inserting in lieu thereof "section 5(c)(1)"; and

(3) by adding at the end the following new subsection:

"(b)(1) Within 90 days after receiving a petition for reconsideration of an order concluding a hearing under section 204(a) or concluding an investigation under section 208(b), the Commission shall issue an order granting or denying such petition.

"(2) Any order issued under paragraph (1) shall be a final order and may be appealed under section 402(a)."

Real property.

SEC. 9. (a) The Federal Communications Commission is authorized to expend such funds as may be required in fiscal years 1989 and 1990, out of its appropriations for such fiscal years, to relocate within the State of Hawaii the Hawaii Monitoring Station presently located in Honolulu (Waipahu), including all necessary expenses for—

- (1) acquisition of real property;
- (2) options to purchase real property;
- (3) architectural and engineering services;
- (4) construction of a facility at the new location;
- (5) transportation of equipment and personnel;
- (6) lease-back of real property and related personal property at the present location of the Monitoring Station pending acquisition of real property and construction of a facility at a new location; and
- (7) the re-establishment, if warranted by the circumstances, of a downtown office to serve the residents of Honolulu.

(b) The Federal Communications Commission shall declare surplus property, for disposition by the General Services Administration, the real property (including the structures and fixtures) and related personal property which are at the present location of the Hawaii Monitoring Station and which will not be relocated. Notwithstanding sections 203 and 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 and 485), the General Services Administration shall sell such real and related personal property on an expedited basis, including provisions for leaseback as required, and shall reimburse the Commission from the net proceeds of the sale for all of the expenditures of the Commission associated with such relocation of the Monitoring Station. All such reimbursed funds received by the Commission shall remain available until expended.

(c) The net proceeds of the sale of such real and related property, less any funds reimbursed to the Federal Communications Commission pursuant to subsection (b), and less normal and reasonable charges by the General Services Administration for costs associated with such sale, shall be deposited in the general funds of the Treasury.

(d) The Hawaii Monitoring Station shall continue its full operations at its present location until a new facility has been built and is fully operational at a new location.

(e) The Federal Communications Commission and the General Services Administration shall not take any action under this section committing any funds disposing of any property in connection with the relocation of the Hawaii Monitoring Station until—

- (1) the Chairman of the Commission and the Administrator of General Services have jointly prepared and submitted, to the Committee on Appropriations, the Committee on Commerce, Science, and Transportation, and the Committee on Governmental Affairs of the Senate, and the Committee on Appropriations, the Committee on Energy and Commerce, and the Committee on Government Operations of the House of Representatives, a letter or other document setting forth in detail the plan and procedures for such relocation which will reasonably carry out, in an expeditious manner, the provisions of this section but will not disrupt or defer any programs or regulatory

activities of the Commission or adversely affect any employee of the Commission (other than those at the Monitoring Station who may be required to transfer to another location) through the use of appropriations for the Commission, in fiscal years 1989 and 1990; and

(2) at least 30 calendar days have passed since the receipt of such document by such committees.

SENSE OF CONGRESS

SEC. 10. (a) The Congress finds that—

(1) more than four hundred and thirty-five thousand four hundred radio amateurs in the United States are licensed by the Federal Communications Commission upon examination in radio regulations, technical principles, and the international Morse code;

(2) by international treaty and the Federal Communications Commission regulation, the amateur is authorized to operate his or her station in a radio service of intercommunications and technical investigations solely with a personal aim and without pecuniary interest;

(3) among the basic purposes for the Amateur Radio Service is the provision of voluntary, noncommercial radio service, particularly emergency communications; and

(4) volunteer amateur radio emergency communications services have consistently and reliably been provided before, during, and after floods, tornadoes, forest fires, earthquakes, blizzards, train wrecks, chemical spills, and other disasters.

(b) It is the sense of the Congress that—

(1) it strongly encourages and supports the Amateur Radio Service and its emergency communications efforts; and

(2) Government agencies shall take into account the valuable contributions made by amateur radio operators when considering actions affecting the Amateur Radio Service.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S. 1048 (H.R. 2961):

HOUSE REPORTS: No. 100-363 accompanying H.R. 2961 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 100-142 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Oct. 13, H.R. 2961 considered and passed House.

Vol. 134 (1988): Oct. 7, S. 1048 considered and passed Senate.

Oct. 19, considered and passed House.

Public Law 100-595
100th Congress

An Act

Nov. 3, 1988

[S. 1476]

To designate the Federal Records Center Extension Building 109 under construction in Overland, Missouri, as the "Charles F. Prevedel Federal Building".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The building under construction in Overland, Missouri, known as the "Federal Records Center Extension Building 109", shall be known and designated as the "Charles F. Prevedel Federal Building".

SEC. 2. LEGAL REFERENCES.

Any reference in a law, map, regulation, document, record, or other paper of the United States to the building referred to in section 1 shall be deemed to be a reference to the "Charles F. Prevedel Federal Building".

Approved November 3, 1988.

LEGISLATIVE HISTORY—S. 1476:

HOUSE REPORTS: No. 100-1007 (Comm. on Public Works and Transportation).
CONGRESSIONAL RECORD, Vol. 134 (1988):

May 16, considered and passed Senate.

Oct. 4, considered and passed House, amended.

Oct. 19, Senate concurred in House amendment.

Public Law 100-596
100th Congress

An Act

To designate the Federal building and United States courthouse located at 300 Booth Street in Reno, Nevada, as the "C. Clifton Young Federal Building and United States Courthouse".

Nov. 3, 1988

[S. 1827]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION.

The Federal building and United States courthouse located at 300 Booth Street in Reno, Nevada, shall be known and designated as the "C. Clifton Young Federal Building and United States Courthouse".

SEC. 2. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the building referred to in section 1 is deemed to be a reference to the "C. Clifton Young Federal Building and United States Courthouse".

Approved November 3, 1988.

LEGISLATIVE HISTORY—S. 1827:

HOUSE REPORTS: No. 100-945 (Comm. on Public Works and Transportation).
CONGRESSIONAL RECORD, Vol. 134 (1988):

Apr. 22, considered and passed Senate.

Oct. 3, considered and passed House, amended.

Oct. 19, Senate concurred in House amendment.

Public Law 100-597
100th Congress

An Act

Nov. 3, 1988

[S. 1863]

To amend the bankruptcy law to provide for special revenue bonds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITION OF MUNICIPALITY.

Section 101(31) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by inserting “and a municipality” after “partnership”; and

(B) in clause (ii) by striking “and” at the end;

(2) in subparagraph (B)(ii) by adding “and” at the end; and

(3) by adding at the end the following:

“(C) with reference to a municipality, financial condition such that the municipality is—

“(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

“(ii) unable to pay its debts as they become due;”.

SEC. 2. WHO MAY BE A DEBTOR.

Section 109(c)(3) of title 11, United States Code, is amended by striking “or unable to meet such entity’s debts as such debts mature”.

SEC. 3. APPLICABILITY OF SECTIONS.

Section 901(a) of title 11, United States Code, is amended by inserting “1129(a)(6),” after “1129(a)(3),”.

SEC. 4. DEFINITION OF SPECIAL REVENUES.

Section 902 of title 11, United States Code, is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively; and

(2) by inserting after paragraph (1) the following:

“(2) ‘special revenues’ means—

“(A) receipts derived from the ownership, operation, or disposition of projects or systems of the debtor that are primarily used or intended to be used primarily to provide transportation, utility, or other services, including the proceeds of borrowings to finance the projects or systems;

“(B) special excise taxes imposed on particular activities or transactions;

“(C) incremental tax receipts from the benefited area in the case of tax-increment financing;

“(D) other revenues or receipts derived from particular functions of the debtor, whether or not the debtor has other functions; or

“(E) taxes specifically levied to finance one or more projects or systems, excluding receipts from general property, sales, or income taxes (other than tax-increment financing) levied to finance the general purposes of the debtor;”.

SEC. 5. AUTOMATIC STAY.

Section 922 of title 11, United States Code, is amended by adding at the end the following:

“(c) If the debtor provides, under section 362, 364, or 922 of this title, adequate protection of the interest of the holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection such creditor has a claim arising from the stay of action against such property under section 362 or 922 of this title or from the granting of a lien under section 364(d) of this title, then such claim shall be allowable as an administrative expense under section 503(b) of this title. Claims.

“(d) Notwithstanding section 362 of this title and subsection (a) of this section, a petition filed under this chapter does not operate as a stay of application of pledged special revenues in a manner consistent with section 927 of this title to payment of indebtedness secured by such revenues.”.

SEC. 6. AVOIDING POWERS.

Section 926 of title 11, United States Code, is amended—

(1) by inserting “(a)” before “If”; and

(2) by adding at the end the following:

“(b) A transfer of property of the debtor to or for the benefit of any holder of a bond or note, on account of such bond or note, may not be avoided under section 547 of this title.”.

SEC. 7. CLAIMS PAYABLE SOLELY FROM SPECIAL REVENUES.

Chapter 9 of title 11, United States Code, is amended—

(1) by redesignating section 927 as section 930; and

(2) by inserting after section 926 the following:

“§ 927. Limitation on recourse

“The holder of a claim payable solely from special revenues of the debtor under applicable nonbankruptcy law shall not be treated as having recourse against the debtor on account of such claim pursuant to section 1111(b) of this title.”.

SEC. 8. POST PETITION EFFECT OF SECURITY INTEREST.

Title 11 of the United States Code is amended by inserting after section 927, as added by section 7, the following:

“§ 928. Post petition effect of security interest

“(a) Notwithstanding section 552(a) of this title and subject to subsection (b) of this section, special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

“(b) Any such lien on special revenues, other than municipal betterment assessments, derived from a project or system shall be subject to the necessary operating expenses of such project or system, as the case may be.”.

SEC. 9. MUNICIPAL LEASES.

Title 11 of the United States Code is amended by inserting after section 928, as added by section 8, the following:

“§ 929. Municipal leases

“A lease to a municipality shall not be treated as an executory contract or unexpired lease for the purposes of section 365 or 502(b)(6) of this title solely by reason of its being subject to termination in the event the debtor fails to appropriate rent.”.

SEC. 10. CONFIRMATION.

Section 943(b) of title 11, United States Code, is amended—

- (1) in paragraph (5) by striking “and” at the end;
- (2) by redesignating paragraph (6) as paragraph (7); and
- (3) by inserting after paragraph (5) the following:

“(6) any regulatory or electoral approval necessary under applicable nonbankruptcy law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval; and”.

SEC. 11. TECHNICAL AMENDMENT.

The table of sections of chapter 9 of title 11, United States Code, is amended by striking the item relating to section 927 and inserting the following:

“927. Limitation on recourse.

“928. Post petition effect of security interest.

“929. Municipal leases.

“930. Dismissal.”.

11 USC 101 note.

SEC. 12. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) **EFFECTIVE DATE.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) **APPLICATION OF AMENDMENTS.**—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S. 1863 (H.R. 5347):

HOUSE REPORTS: No. 100-1011 accompanying H.R. 5347 (Comm. on the Judiciary).

SENATE REPORTS: No. 100-506 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 20, considered and passed Senate.

Oct. 3, 4, H.R. 5347 considered and passed House.

Oct. 14, considered and passed Senate, amended.

Oct. 19, S. 1863 considered and passed House, amended.

Oct. 20, Senate concurred in House amendment.

Public Law 100-598
100th Congress

An Act

To reauthorize the Office of Government Ethics, and for other purposes.

Nov. 3, 1988

[S. 2344]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Government
organization
and employees.

SECTION 1. REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Ethics in Government Act of 1978 (5 U.S.C. App.).

SEC. 2. REAUTHORIZATION.

Appropriation
authorization.
5 USC app.

Section 405 is amended to read as follows:

"There are authorized to be appropriated to carry out the provisions of this title and for no other purpose—

"(1) not to exceed \$2,500,000 for the fiscal year ending September 30, 1989; and

"(2) not to exceed \$3,500,000 for each of the 5 fiscal years thereafter."

SEC. 3. OFFICE OF GOVERNMENT ETHICS TO FUNCTION INDEPENDENTLY.

(a) ESTABLISHMENT AS A SEPARATE EXECUTIVE AGENCY.—Section 401(a) is amended by striking out "in the Office of Personnel Management an office to be known as" and inserting "an executive agency to be known as".

5 USC app.

(b) APPOINTMENT AND CONTRACTING AUTHORITY.—Section 401 is amended by adding at the end the following:

"(c) The Director may—

"(1) appoint officers and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code; and

"(2) contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Office of Government Ethics in such amounts as may be agreed upon by the Director and the head of the agency providing such services.

Contract authority under paragraph (2) shall be effective for any fiscal year only to the extent that appropriations are available for that purpose."

SEC. 4. REPORTS TO CONGRESS.

5 USC app.

The Ethics in Government Act of 1978 is amended by adding after section 407 the following:

"REPORTS TO CONGRESS

"SEC. 408. The Director shall, no later than March 31 of each year in which the second session of a Congress begins, submit to the Congress a report containing—

"(1) a summary of the actions taken by the Director during a 2-year period ending on December 31 of the preceding year in order to carry out the Director's functions and responsibilities under this title; and

"(2) such other information as the Director may consider appropriate."

SEC. 5. AGENCY PROCEDURES RELATING TO FINANCIAL DISCLOSURE STATEMENTS.

5 USC app.

Section 402 is amended by adding after subsection (c) the following:

"(d)(1) The Director shall, by the exercise of any authority otherwise available to the Director under this title, ensure that each executive agency has established written procedures relating to how the agency is to collect, review, evaluate, and, if applicable, make publicly available, financial disclosure statements filed by any of its officers or employees.

"(2) In carrying out paragraph (1), the Director shall ensure that each agency's procedures are in conformance with all applicable requirements, whether established by law, rule, regulation, or Executive order."

SEC. 6. INFORMATION TO BE REPORTED BY EXECUTIVE AGENCIES.

Section 402 is amended by adding after subsection (d) (as added by section 5) the following:

Regulations.

"(e) In carrying out subsection (b)(10), the Director shall prescribe regulations under which—

Reports.

"(1) each executive agency shall be required to submit to the Office an annual report containing—

"(A) a description and evaluation of the agency's ethics program, including any educational, counseling, or other services provided to officers and employees, in effect during the period covered by the report; and

"(B) the position title and duties of—

"(i) each official who was designated by the agency head to have primary responsibility for the administration, coordination, and management of the agency's ethics program during any portion of the period covered by the report; and

"(ii) each officer or employee who was designated to serve as an alternate to the official having primary responsibility during any portion of such period; and

"(C) any other information that the Director may require in order to carry out the responsibilities of the Director under this title; and

"(2) each executive agency shall be required to inform the Director upon referral of any alleged violation of Federal conflict of interest law to the Attorney General pursuant to section 535 of title 28, United States Code, except that nothing under this paragraph shall require any notification or disclosure which would otherwise be prohibited by law."

SEC. 7. CORRECTIVE ACTION.

Section 402 is amended by adding after subsection (e) (as added by section 6) the following:

5 USC app.

“(f)(1) In carrying out subsection (b)(9) with respect to executive agencies, the Director—

“(A) may—

Public
information.

“(i) order specific corrective action on the part of an agency based on the failure of such agency to establish a system for the collection, filing, review, and, when applicable, public inspection of financial disclosure statements, in accordance with applicable requirements, or to modify an existing system in order to meet applicable requirements; or

“(ii) order specific corrective action involving the establishment or modification of an agency ethics program (other than with respect to any matter under clause (i)) in accordance with applicable requirements; and

“(B) shall, if an agency has not complied with an order under subparagraph (A) within a reasonable period of time, notify the President and the Congress of the agency's noncompliance in writing (including, with the notification, any written comments which the agency may provide).

“(2)(A) In carrying out subsection (b)(9) with respect to individual officers and employees—

“(i) the Director may make such recommendations and provide such advice to such officers and employees as the Director considers necessary to ensure compliance with rules, regulations, and Executive orders relating to conflicts of interest or standards of conduct;

“(ii) if the Director has reason to believe that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

“(I) may recommend to the head of the officer's or employee's agency that such agency head investigate the possible violation and, if the agency head finds such a violation, that such agency head take any appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) against the officer or employee, except that, if the officer or employee involved is the agency head, any such recommendation shall instead be submitted to the President; and

“(II) shall notify the President in writing if the Director determines that the head of an agency has not conducted an investigation pursuant to subclause (I) within a reasonable time after the Director recommends such action;

“(iii) if the Director finds that an officer or employee is violating any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

“(I) may order the officer or employee to take specific action (such as divestiture, recusal, or the establishment of a blind trust) to end such violation; and

“(II) shall, if the officer or employee has not complied with the order under subclause (I) within a reasonable period of time, notify, in writing, the head of the officer's or employee's agency of the officer's or employee's noncompli-

ance, except that, if the officer or employee involved is the agency head, the notification shall instead be submitted to the President; and

“(iv) if the Director finds that an officer or employee violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct of the Director—

“(I) may recommend to the head of the officer’s or employee’s agency that appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee, except that if the officer or employee involved is the agency head, any such recommendations shall instead be submitted to the President; and

“(II) may notify the President in writing if the Director determines that the head of an agency has not taken appropriate disciplinary action within a reasonable period of time after the Director recommends such action.

“(B)(i) In order to carry out the Director’s duties and responsibilities under subparagraph (A) (iii) or (iv) with respect to individual officers and employees, the Director may conduct investigations and make findings concerning possible violations of any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct applicable to officers and employees of the executive branch.

“(ii)(I) Subject to clause (iv) of this subparagraph, before any finding is made under subparagraphs (A) (iii) or (iv), the officer or employee involved shall be afforded notification of the alleged violation, and an opportunity to comment, either orally or in writing, on the alleged violation.

“(II) The Director shall, in accordance with section 553 of title 5, United States Code, establish procedures for such notification and comment.

“(iii) Subject to clause (iv) of this subparagraph, before any action is ordered under subparagraph (A)(iii), the officer or employee involved shall be afforded an opportunity for a hearing, if requested by such officer or employee, except that any such hearing shall be conducted on the record.

“(iv) The procedures described in clauses (ii) and (iii) of this subparagraph do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in title 2 of this Act. For those findings and orders, the procedures in section 206 of this Act shall apply.

“(3) The Director shall send a copy of any order under paragraph (2)(A)(iii) to—

“(A) the officer or employee who is the subject of such order; and

“(B) the head of officer’s or employee’s agency or, if such officer or employee is the agency head, to the President.

“(4) For purposes of paragraphs (2)(A) (ii), (iii), (iv), and (3)(B), in the case of an officer or employee within an agency which is headed by a board, committee, or other group of individuals (rather than a single individual), any notification, recommendation, or other matter which would otherwise be sent to an agency head shall instead be sent to the officer’s or employee’s appointing authority.

“(5) Nothing in this title shall be considered to allow the Director (or any designee) to make any finding that a provision of title

United States Code, or any criminal law of the United States outside such title, has been or is being violated.

(6) Notwithstanding any other provision of law, no record developed pursuant to the authority of this section concerning an investigation of an individual for a violation of any rule, regulation, or executive order relating to a conflict of interest shall be made available pursuant to section 552(a)(3) of title 5, United States Code, unless the request for such information identifies the individual to whom such records relate and the subject matter of any alleged violation to which such records relate, except that nothing in this section shall affect the application of the provisions of section 552(b) of title 5, United States Code, to any record so identified.”.

Records.

C. 8. ANNUAL PAY OF DIRECTOR.

Section 407 is amended to read as follows:

5 USC app.

“ANNUAL PAY OF DIRECTOR

“SEC. 407. Chapter 53 of title 5, United States Code, is amended—

“(1) in section 5316 by striking out: ‘Director of the Office of Government Ethics.’; and

“(2) in section 5314 by adding at the end thereof: ‘Director of the Office of Government Ethics.’ ”.

C. 9. ADMINISTRATIVE PROVISIONS.

Section 403 is amended by striking out “pursuant to subsections (3) and (b)(4) of section 402.” and inserting in lieu thereof “pursuant to the Office of Government Ethics responsibilities under this Act. The head of any agency may detail such personnel and furnish such services, with or without reimbursement, as the Director may request to carry out the provisions of this Act”.

5 USC app.

C. 10. EFFECTIVE DATE.

5 USC app.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) EXCEPTION.—The amendments made by section 3 shall take effect on October 1, 1989.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S. 2344 (H.R. 4712):

HOUSE REPORTS: No. 100-1017, Pt. 1, accompanying H.R. 4712 (Comm. on Post Office and Civil Service).

SENATE REPORTS: No. 100-392 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 134 (1988):

June 28, considered and passed Senate.

Oct. 3, 4, considered and passed House, amended, in lieu of H.R. 4712.

Oct. 20, Senate concurred in House amendment with an amendment. House concurred in Senate amendment.

Public Law 100-599
100th Congress

An Act

Nov. 3, 1988

[S. 2835]

To designate the United States Post Office and Courthouse located at 151 West Street in Rutland, Vermont, as the "Robert T. Stafford United States Courthouse and Post Office".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Post Office and Courthouse located at 151 West Street in Rutland, Vermont, shall be known and designated as the "Robert T. Stafford United States Courthouse and Post Office".

SEC. 2. **LEGAL REFERENCES TO BUILDING.**—Any reference in any law, regulation, document, record, map, or other paper of the United States to the building referred to in section 1 is deemed to be a reference to the "Robert T. Stafford United States Courthouse and Post Office".

SEC. 3. **EFFECTIVE DATE.**—The provisions of this Act shall be effective on January 4, 1989.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S. 2835:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 28, considered and passed Senate.

Oct. 19, considered and passed House.

Public Law 100-600
100th Congress

Joint Resolution

To designate the week of November 27, 1988 through December 3, 1988 as "National Home Care Week."

Nov. 3, 1988

[S.J. Res. 280]

Whereas organized home health care services to the elderly and disabled have existed in this country since the last quarter of the eighteenth century;

Whereas home health care, including skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, health counseling and education, and homemaker-home health aide services, is recognized as an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled in their homes places emphasis on the dignity and independence of the individual receiving such services;

Whereas the Federal Government has supported home health services since the enactment of the medicare program, with the number of home health agencies providing services increasing from less than five hundred to more than five thousand; and

Whereas many private, public, and charitable organizations provide these and similar services to millions of patients each year preventing, postponing, and limiting the need for institutionalization and enabling such patients to remain independent: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of November 27, 1988 through December 3, 1988 is designated as "National Home Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S.J. Res. 280:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 7, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-601
100th Congress

Joint Resolution

Nov. 3, 1988

[S.J. Res. 302]

To designate October 1988 as "National Down Syndrome Month".

Whereas the past decade and a half has brought a greater and more enlightened attitude in the care and training of the developmentally disabled;

Whereas one such condition which has undergone considerable reevaluation is that of Down syndrome—a problem which, just a short time ago, was often stigmatized as a mentally retarded condition which relegated its victims to lives of passivity in institutions and back rooms;

Whereas through the efforts of concerned physicians, teachers and parent groups such as the National Down Syndrome Congress, programs are being put in place to educate new parents of babies with Down syndrome, to develop special education classes within mainstreamed programs in schools, to provide for vocational training in preparation for entering the work force, and to prepare young adults with Down syndrome for independent living in the community;

Whereas the cost of such services designed to help individuals with Down syndrome move into their rightful place in our society is but a tiny fraction of the cost of institutionalization;

Whereas not only the improvement in educational opportunities for those with Down syndrome, but also the advancement in medical science is adding to a brighter outlook for individuals born with this chromosomal configuration; and

Whereas public awareness and acceptance of the capabilities of children with Down syndrome can greatly facilitate their being mainstreamed in our society: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 1988 is designated as "National Down Syndrome Month" and that the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the designated month with appropriate programs, ceremonies, and activities.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S.J. Res. 302:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-602
100th Congress

Joint Resolution

To designate February 1989 as "America Loves Its Kids Month".

Nov. 3, 1988

[S.J. Res. 324]

Whereas all of the children in the United States, including newborn infants, toddlers, kids who attend preschool, nursery school, kindergarten, elementary school, junior high school, high school, open school, alternative school, and private school, out-of-school kids, and kids of every race, creed, and color, deserve the recognition and support of the people of the United States;

Whereas the adults in the United States should recognize their duty to protect children by reporting any suspicion of child abuse or neglect, the selling of alcoholic beverages to minors, or the dealing of drugs by or for children;

Whereas children in the United States who are achieving success deserve to be highly complimented and given special recognition for their accomplishments;

Whereas the people of the United States should help to raise the self-esteem of children, especially children who have experienced hardship and hurt in their lives, by making an effort to communicate with and to support children;

Whereas adults in the United States should frequently offer to children hugs, smiles, pats on the back, and words of kindness and encouragement, to help children become more confident and successful; and

Whereas the Congress and the President can help children of the United States by designating a month for a united effort of the people of the United States to show their love and appreciation of the children of the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That February 1989 is designated as "America Loves Its Kids Month", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S.J. Res. 324:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-603
100th Congress

Joint Resolution

Nov. 3, 1988

[S.J. Res. 335]

To designate the last full week of October, October 23 through October 29, 1988, as "National Adult Immunization Awareness Week".

Whereas the Surgeon General of the United States has declared as a major health initiative the reduction of vaccine-preventable death and disease among adults in the United States;

Whereas the reduction of these infectious diseases could save as many as 70,000 lives annually and more than \$1 billion in direct costs annually;

Whereas the Surgeon General has declared the goal of immunizing 60 percent of America's elderly and chronically ill against influenza and pneumococcal pneumonia, yet only 18 percent of susceptible adults are immunized against influenza and 10 percent against pneumococcal pneumonia;

Whereas hepatitis B has grown to epidemic proportions in this country despite the availability of a highly effective vaccine;

Whereas childhood diseases like measles and mumps are on the rise among young adults;

Whereas newborn infants in America are at risk of congenital deformities or death because 9-15 percent of women of childbearing age are not adequately protected against rubella;

Whereas the Congress has authorized through the Omnibus Reconciliation Act of 1987 a \$25 million-a-year demonstration project to prove the cost-effectiveness of influenza vaccinations among Medicare recipients;

Whereas efforts should be made to alert Medicare participants to enroll in this project;

Whereas public awareness in the field of adult immunization has been conducted primarily by the voluntary sector; and

Whereas the Congress and the President have consistently declared the last week of October as "National Adult Immunization Awareness Week": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the last full week of October, October 23 through October 29, 1988, is designated as

“National Adult Immunization Awareness Week”, and the President is authorized and requested to issue a proclamation calling upon the people, the Surgeon General, and other Federal health officials of the United States to observe such week with appropriate ceremonies and activities.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S.J. Res. 335:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed Senate.

Oct. 21, considered and passed House.

Joint Resolution

Nov. 3, 1988

[S.J. Res. 381]

To designate October 30, 1988, as "Fire Safety at Home Day—Change Your Clock Change Your Battery".

Whereas every year, five hundred thousand fires ravage the homes of Americans, resulting in over six thousand deaths and three hundred thousand injuries;

Whereas home fires are the leading cause of death and serious injury among children in the United States;

Whereas senior citizens, families in substandard housing, and the physically and mentally disabled are at high risk to be victims of fire;

Whereas three out of four homes have at least one smoke detector but an estimated one-half are inoperable because of worn or missing batteries;

Whereas the International Association of Fire Chiefs estimates that the annual practice of changing batteries in smoke detectors would save thousands of lives and billions of dollars in property damage;

Whereas the Congressional Fire Services Caucus, with its broad-based bipartisan membership, reflects the concern of Congress for fire safety and its dedication to making it an important national priority;

Whereas the designation of a special day to remind Americans to properly maintain their smoke detectors, timed to coincide with the fall ritual of resetting clocks, would greatly diminish the human tragedy; and

Whereas October 30, 1988, is the day Americans change their clocks from daylight saving time: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the thirtieth day of October 1988 is hereby designated as "Fire Safety at Home Day—Change Your Clock, Change Your Battery". The President is requested to issue a proclamation calling upon the people of the United States to observe that day by maintaining their first line of defense against fire by changing the batteries in their smoke detectors when they reset their clocks from daylight saving time.

Approved November 3, 1988.

LEGISLATIVE HISTORY—S.J. Res. 381:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 20, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-605
100th Congress

An Act

To authorize a study of the Hanford Reach of the Columbia River, and for other purposes.

Nov. 4, 1988

[H.R. 3614]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COMPREHENSIVE RIVER CONSERVATION STUDY.

The Secretary of the Interior ("Secretary"), in consultation with the Secretary of Energy, shall prepare a comprehensive river conservation study for that segment of the Columbia River extending from one mile below Priest Rapids Dam downstream approximately fifty-one miles to the McNary Pool north of Richland, Washington, as generally depicted on the map entitled "Proposed Columbia River Wild and Scenic River Boundary" dated May 17, 1988, hereinafter referred to as the "study area" which is on file with the United States Department of the Interior. The study shall identify and evaluate the outstanding features of the study area and its immediate environment, including fish and wildlife, geologic, scenic, recreational, natural, historical, and cultural values, and examine alternatives for their preservation. In examining alternatives means for the preservation of such values, the Secretary shall, among other things, consider the potential addition of all or a portion of the study area to the National Wild and Scenic Rivers System, and recommend a preferred alternative for the protection and preservation of the values identified. The Secretary shall cooperate and consult with the State and political subdivisions thereof, local, and tribal governments, and other interested entities in preparation of such a study and provide for public comment. The study shall be completed and presented to Congress within three years after the date of enactment of this Act.

Washington.

State and local
governments.

SEC. 2. INTERIM PROTECTION.

(a) For a period of eight years after the enactment of this Act, within the study area identified in section 1 of this Act:

(1) No Federal agency may construct any dam, channel, or navigation project.

(2) All other new Federal and non-Federal projects and activities shall, to the greatest extent practicable:

(A) be planned, designed, located and constructed to minimize direct and adverse effects on the values for which the river is under study; and

(B) utilize existing structures and facilities including, but not limited to, pipes, pipelines, transmission towers, water conduits, powerhouses, and reservoirs to accomplish the purposes of the project or activity.

(3) Federal and non-Federal entities planning new projects or activities in the study area shall consult and coordinate with the Secretary to minimize and provide mitigation for any direct

and adverse effects on the values for which the river is under study.

(4) Upon receiving notice from the entity planning the project or activity, the Secretary shall, no later than ninety days after receiving such notice and consulting with the entity,

(A) review the proposed project or activity and make a determination as to whether there will be a direct and adverse effect on the values for which the river segment is under study; and

(B) review proposals to mitigate such effects and make such recommendations for mitigation as he deems necessary.

(5) If the Secretary determines that there will be a direct and adverse effect that has not been adequately mitigated, he shall notify the sponsoring entity and the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate of his determination and any proposed recommendations.

(b) During the eight year interim protection period, provided in this section, all existing projects that affect the study area shall be operated and maintained to minimize any direct and adverse effects on the values for which the river is under study, taking into account any existing and relevant license, permit, or agreement affecting the project.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated not more than \$150,000 for the purpose of conducting the study pursuant to section 1 of this Act.

Approved November 4, 1988.

LEGISLATIVE HISTORY—H.R. 3614:

HOUSE REPORTS: No. 100-960 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 26, considered and passed House.

Oct. 12, considered and passed Senate, amended.

Oct. 19, House concurred in Senate amendment.

Public Law 100-606
100th Congress

An Act

To implement the International Convention on the Prevention and Punishment of
Genocide.

Nov. 4, 1988

[S. 1851]

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Genocide Convention Implementa-
tion Act of 1987 (the Proxmire Act)”.

Genocide
Convention
Implementation
Act of 1987 (the
Proxmire Act).
18 USC 1091
note.

SEC. 2. TITLE 18 AMENDMENTS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended
by inserting after chapter 50 the following:

“CHAPTER 50A—GENOCIDE

“Sec.

1091. Genocide.

1092. Exclusive remedies.

1093. Definitions.

“§ 1091. Genocide

“(a) BASIC OFFENSE.—Whoever, whether in time of peace or in
time of war, in a circumstance described in subsection (d) and with
the specific intent to destroy, in whole or in substantial part, a
national, ethnic, racial, or religious group as such—

“(1) kills members of that group;

“(2) causes serious bodily injury to members of that group;

“(3) causes the permanent impairment of the mental faculties
of members of the group through drugs, torture, or similar
techniques;

“(4) subjects the group to conditions of life that are intended
to cause the physical destruction of the group in whole or in
part;

“(5) imposes measures intended to prevent births within the
group; or

“(6) transfers by force children of the group to another group;
or attempts to do so, shall be punished as provided in subsection (b).

“(b) PUNISHMENT FOR BASIC OFFENSE.—The punishment for an
offense under subsection (a) is—

“(1) in the case of an offense under subsection (a)(1), a fine of
not more than \$1,000,000 and imprisonment for life; and

“(2) a fine of not more than \$1,000,000 or imprisonment for
not more than twenty years, or both, in any other case.

“(c) INCITEMENT OFFENSE.—Whoever in a circumstance described
in subsection (d) directly and publicly incites another to violate
subsection (a) shall be fined not more than \$500,000 or imprisoned
not more than five years, or both.

“(d) REQUIRED CIRCUMSTANCE FOR OFFENSES.—The circumstance
referred to in subsections (a) and (c) is that—

“(1) the offense is committed within the United States; or
“(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

“(e) **NONAPPLICABILITY OF CERTAIN LIMITATIONS.**—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or information instituted, at any time without limitation.

“§ 1092. Exclusive remedies

“Nothing in this chapter shall be construed as precluding the application of State or local laws to the conduct proscribed by this chapter, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

“§ 1093. Definitions

“As used in this chapter—

“(1) the term ‘children’ means the plural and means individuals who have not attained the age of eighteen years;

“(2) the term ‘ethnic group’ means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

“(3) the term ‘incites’ means urges another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

“(4) the term ‘members’ means the plural;

“(5) the term ‘national group’ means a set of individuals whose identity as such is distinctive in terms of nationality or national origins;

“(6) the term ‘racial group’ means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

“(7) the term ‘religious group’ means a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

“(8) the term ‘substantial part’ means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.”.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 50 the following new item:

“50A. Genocide 1091”.

Approved November 4, 1988.

LEGISLATIVE HISTORY—S. 1851 (H.R. 4243):

HOUSE REPORTS: No. 100-566 accompanying H.R. 4243 (Comm. on the Judiciary).

SENATE REPORTS: No. 100-333 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Apr. 25, H.R. 4243 considered and passed House.

Oct. 14, S. 1851 considered and passed Senate.

Oct. 19, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):

Nov. 4, Presidential remarks.

Public Law 100-607
100th Congress

An Act

Nov. 4, 1988

[S. 2889]

Health Omnibus
Programs
Extension of
1988.
42 USC 201 note.

To amend the Public Health Service Act to establish certain health programs, to revise and extend certain health programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF TITLES.

(a) **SHORT TITLE.**—This Act may be cited as the “Health Omnibus Programs Extension of 1988”.

(b) **TABLE OF TITLES.**—

Title I—National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988

Title II—Programs with Respect to Acquired Immune Deficiency Syndrome

Title III—Preventive Health, Health Services, and Health Promotion

Title IV—Organ Transplant Amendments of 1988

Title V—Food and Drug Administration

Title VI—Health Professions Reauthorization Act of 1988

Title VII—Nursing Shortage Reduction and Education Extension Act of 1988

Title VIII—Revision and Extension of Programs of Health Care for the Homeless

Title IX—Testing of Convicted Felons

National
Institute on
Deafness and
Other
Communication
Disorders and
Health
Research
Extension Act
of 1988.
42 USC 201
note.

**TITLE I—NATIONAL INSTITUTE ON DEAF-
NESS AND OTHER COMMUNICATION
DISORDERS AND HEALTH RESEARCH
EXTENSION ACT OF 1988**

SEC. 100. SHORT TITLE; REFERENCES.

(a) **SHORT TITLE.**—This title may be cited as the “National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988”.

(b) **REFERENCES TO PUBLIC HEALTH SERVICE ACT.**—Except as otherwise specifically provided, any reference made in this title to an amendment or repeal of a section or other provision shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

**Subtitle A—National Institute on Deafness and
Other Communication Disorders**

SEC. 101. ESTABLISHMENT AND TRANSFER OF FUNCTIONS.

Title IV (42 U.S.C. 281 et seq.) is amended—

(1) in section 401(b)(1)—

(A) by striking “and Communicative” in subparagraph (J); and

(B) by adding at the end the following new subparagraph:

42 USC 281.

“(M) The National Institute on Deafness and Other Communication Disorders.”;

(2) in the heading for subpart 10 of part C, by striking “and Communicative”;

(3) in section 457—

(A) by striking “and Communicative”; and

(B) by striking “disorder, stroke,” and all that follows and inserting “and disorder and stroke.”; and

(4) in Part C, by adding at the end the following new subpart:

42 USC 285j.

“Subpart 13—National Institute on Deafness and Other Communication Disorders

“PURPOSE OF THE INSTITUTE

“SEC. 464. The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the ‘Institute’) is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

Research and development.
42 USC 285m.

“NATIONAL DEAFNESS AND OTHER COMMUNICATION DISORDERS PROGRAM

“SEC. 464A. (a) The Director of the Institute, with the advice of the Institute’s advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the ‘Program’). The Director or the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

42 USC 285m-1.

“(b) Activities under the Program shall include—

“(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

“(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

Research and development.

“(3) research into prevention, and early detection and diagnosis, of hearing loss and speech and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

“(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

“(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

“(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

“DATA SYSTEM AND INFORMATION CLEARINGHOUSE

42 USC 285m-2.

“SEC. 464B. (a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

“(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

“MULTIPURPOSE DEAFNESS AND OTHER COMMUNICATION DISORDERS CENTER

42 USC 285m-3.

“SEC. 464C. (a) The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term ‘modernization’ means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

“(b) Each center assisted under this section shall—

“(1) use the facilities of a single institution or a consortium of cooperating institutions; and

“(2) meet such qualifications as may be prescribed by the Secretary.

“(c) Each center assisted under this section shall, at least, conduct—

“(1) basic and clinical research into the cause, diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabili-

tative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

“(2) training programs for physicians, scientists, and other health and allied health professionals;

Health care
professionals.
Education.

“(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

“(4) programs for the dissemination to the general public of information—

“(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

“(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

“(d) A center may use funds provided under subsection (a) to provide stipends for health professionals enrolled in training programs described in subsection (c)(2).

“(e) Each center assisted under this section may conduct programs—

“(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

“(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

“(f) The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

Aged persons.
Children and
youth.

“(g) Support of a center under this section may be for a period not to exceed seven years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.”.

Subtitle B—Biotechnology Information

SEC. 105. ESTABLISHMENT OF NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION.

Part D of title IV (42 U.S.C. 286 et seq.) is amended by adding at the end the following new subpart:

"Subpart 3—National Center for Biotechnology Information**"PURPOSE, ESTABLISHMENT, FUNCTIONS, AND FUNDING OF THE
NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION**

Research and
development.
42 USC 286c.

"SEC. 478. (a) In order to focus and expand the collection, storage, retrieval, and dissemination of the results of biotechnology research by information systems, and to support and enhance the development of new information technologies to aid in the understanding of the molecular processes that control health and disease, there is established the National Center for Biotechnology Information (hereinafter in this section referred to as the 'Center') in the National Library of Medicine.

"(b) The Secretary, through the Center and subject to section 465(d), shall—

"(1) design, develop, implement, and manage automated systems for the collection, storage, retrieval, analysis, and dissemination of knowledge concerning human molecular biology, biochemistry, and genetics;

"(2) perform research into advanced methods of computer-based information processing capable of representing and analyzing the vast number of biologically important molecules and compounds;

"(3) enable persons engaged in biotechnology research and medical care to use systems developed under paragraph (1) and methods described in paragraph (2); and

"(4) coordinate, as much as is practicable, efforts to gather biotechnology information on an international basis.

"(c) For the purpose of performing the duties specified in subsection (b), there are authorized to be appropriated \$8,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Funds appropriated under this subsection shall remain available until expended."

Appropriation
authorization.

Subtitle C—National Institutes of Health**SEC. 111. APPOINTMENT AND AUTHORITY OF THE DIRECTOR.**

Section 402(b)(6) (42 U.S.C. 282(b)(6)) is amended by inserting "and scientific program advisory committees" after "scientific peer review groups".

SEC. 112. REPORT OF DIRECTOR OF NIH.

Section 403 (42 U.S.C. 283) is amended—

(1) in paragraph (3), by striking out "and";

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3), the following new paragraph:

"(4) a description of the health related behavioral research that has been supported by the National Institutes of Health in the preceding 2-year period, and a description of any plans for future activity in such area; and"

Subtitle D—General Provisions Respecting National Research Institutes

SEC. 116. APPOINTMENT AND AUTHORITY OF THE DIRECTORS.

Section 405 (42 U.S.C. 284) is amended—

(1) in subsection (b), in the matter preceding subparagraph (A) of paragraph (1), by striking “the human diseases” and inserting “human diseases”; and

(2) in subsection (c)—

(A) by amending paragraph (3) to read as follows:

“(3) may, in consultation with the advisory council for the Institute and the approval of the Director of NIH, establish technical and scientific peer review groups in addition to those established under section 402(b)(6); and”;

(B) by striking “and” at the end of paragraph (2); and

(C) by adding at the end the following new paragraph:

“(4) may publish, or arrange for the publication of, information with respect to the purpose of the Institute without regard to section 501 of title 44, United States Code.”.

SEC. 117. ADVISORY COUNCILS.

(a) **VOTING STATUS.**—Section 406(b)(1) (42 U.S.C. 284a(b)(1)) is amended by adding at the end the following: “The ex officio members shall be nonvoting members.”.

(b) **APPOINTMENT OF MEMBERS.**—Section 406(b)(3)(A) (42 U.S.C. 284a(b)(3)(A)) is amended by inserting after “(including” the following: “not less than two individuals who are leaders in the fields of”.

(c) **TERMINATION OF MEMBERSHIPS.**—Section 406(h)(2)(A)(v) (42 U.S.C. 284a(h)(2)(A)(v)) is amended—

(1) by inserting “shall be nonvoting members and” after “the Board”; and

(2) by striking out “and the Assistant Secretary of Defense for Health Affairs” and inserting in lieu thereof “the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Energy Research of the Department of Energy”.

SEC. 118. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—Paragraphs (1) and (2) of section 408(a) (42 U.S.C. 284c(a)) are amended to read as follows:

“(1)(A) For the National Cancer Institute (other than its programs under section 412), there are authorized to be appropriated \$1,500,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.

“(B) For the programs under section 412, there are authorized to be appropriated \$100,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.

“(2)(A) For the National Heart, Lung, and Blood Institute (other than its program under section 419), there are authorized to be appropriated \$1,100,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Of the amounts appropriated for the National Heart, Lung, and Blood Institute (other than its program under section 419) for a fiscal year, the Secretary shall make available not less than 15 percent for programs respecting diseases of the lung and not less than 15

percent for programs respecting blood diseases and blood resources.

“(B) For the program of the National Heart, Lung, and Blood Institute under section 419 there is authorized to be appropriated \$101,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.”.

(b) **APPLICABILITY OF CERTAIN PROVISIONS TO NURSES AND ALLIED HEALTH PROFESSIONALS.**—Section 408(b) (42 U.S.C. 284c(b)) is amended by adding at the end the following new paragraph:

“(5) For fiscal year 1989 and subsequent fiscal years, amounts made available to the National Institutes of Health shall be available for payment of nurses and allied health professionals in accordance with payment authorities, scheduling options, benefits, and other authorities provided under chapter 73 of title 38, United States Code, for nurses of the Veterans’ Administration.”.

Subtitle E—National Cancer Institute

SEC. 121. PURPOSE.

Section 410 (42 U.S.C. 285) is amended by inserting “, rehabilitation from cancer,” after “treatment of cancer”.

SEC. 122. SPECIAL AUTHORITIES OF THE DIRECTOR.

Section 413 (42 U.S.C. 285a-2(b)) is amended—

(1) in subsection (a)—

(A)(i) in the first sentence, by striking “information and education center” and inserting “information and education program”; and

(ii) in the second sentence, by inserting after “between the Institute” the following: “and the public and between the Institute and”; and

(B) by inserting “(1)” after the subsection designation and adding at the end the following new paragraph:

“(2) In carrying out paragraph (1), the Director of the Institute shall—

public
formation.

“(A) provide public and patient information and education programs, providing information that will help individuals take personal steps to reduce their risk of cancer, to make them aware of early detection techniques and to motivate appropriate utilization of those techniques, to help individuals deal with cancer if it strikes, and to provide information to improve long-term survival;

“(B) continue and expand programs to provide physicians and the public with state-of-the-art information on the treatment of particular forms of cancers, and to identify those clinical trials that might benefit patients while advancing knowledge of cancer treatment;

“(C) assess the incorporation of state-of-the-art cancer treatments into clinical practice and the extent to which cancer patients receive such treatments and include the results of such assessments in the biennial reports required under section 407;

“(D) maintain and operate the International Cancer Research Data Bank, which shall collect, catalog, store, and disseminate insofar as feasible the results of cancer research and treatment undertaken in any country for the use of any person involved in cancer research and treatment in any country; and

“(E) to the extent practicable, in disseminating the results of such cancer research and treatment, utilize information systems available to the public.”; and

(2) in subsection (b)—

(A) in paragraph (5), by striking “with the approval of” and inserting “after consultation with”; and

(B)(i) by adding “and” at the end of paragraph (8); and

(ii) by striking paragraph (9) and redesignating paragraph (10) as paragraph (9).

SEC. 123. NATIONAL CANCER RESEARCH AND DEMONSTRATION CENTERS.

Section 414(a)(1) (42 U.S.C. 285a-3(a)(1)) is amended by inserting “control,” after “prevention.”.

Subtitle F—National Heart, Lung, and Blood Institute

SEC. 126. INFORMATION AND EDUCATION.

The second sentence of section 420 (42 U.S.C. 285b-2) is amended to read as follows: “In carrying out this section, the Director of the Institute shall place special emphasis upon the utilization of collaborative efforts with both the public and private sectors to—

“(1) increase the awareness and knowledge of health care professionals and the public regarding the prevention of heart and blood vessel, lung, and blood diseases and the utilization of blood resources; and

“(2) develop and disseminate to health professionals, patients and patient families, and the public information designed to encourage adults and children to adopt healthful practices concerning the prevention of such diseases.”.

Health care professionals.

SEC. 127. RESOURCES PROGRAM.

Section 421 (42 U.S.C. 285b-3) is amended—

(1) in subsection (a)(1)(D), by inserting “and rehabilitation from” after “treatment of”; and

(2) in subsection (b), by striking out “, after approval of” in paragraph (1) and inserting “after consultation with”;

SEC. 128. NATIONAL RESEARCH AND DEMONSTRATION CENTERS.

Section 422(a)(1) (42 U.S.C. 285b-4(a)(1)) is amended—

(1) in subparagraph (A), by inserting “and rehabilitation” after “treatment”; and

(2) in subparagraph (B), by inserting “and rehabilitation” after “treatment”.

SEC. 129. INTERAGENCY TECHNICAL COMMITTEE.

Subpart 2 of part C of title IV (42 U.S.C. 285b et seq.) is amended by striking section 423 and redesignating section 424 as section 423.

42 USC 288b-5,
285b-6.

Subtitle G—National Institute of Diabetes and Digestive and Kidney Diseases

SEC. 131. ADVISORY BOARDS.

Section 430 (42 U.S.C. 285c-4) is amended by striking subsection (k) and redesignating subsection (l) as subsection (k).

Subtitle H—National Institute of Arthritis and Musculoskeletal and Skin Diseases

SEC. 136. NATIONAL ARTHRITIS AND MUSCULOSKELETAL DISEASES PROGRAMS.

Section 436 (42 U.S.C. 285d-1) is amended—

(1) in the section heading, by inserting “AND SKIN” after “MUSCULOSKELETAL”;

(2) in the first sentence of subsection (a), by inserting “and skin” after “musculoskeletal” each place it appears;

(3) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting “and skin” after “musculoskeletal” each place it appears;

(B) in paragraph (1), by inserting “and skin” after “musculoskeletal” each place it appears; and

(C) in paragraph (2), by inserting “and skin” after “musculoskeletal”; and

(4) in subsection (c), by inserting “and skin” after “musculoskeletal”.

SEC. 137. MULTIPURPOSE DISEASE CENTERS.

Section 441(b)(2)(A) (42 U.S.C. 285d-6(b)(2)(A)) is amended by inserting “and rehabilitation from” after “treatment of”.

Subtitle I—National Institute on Aging

SEC. 141. CENTERS OF GERIATRIC RESEARCH AND TRAINING.

Subpart 5 of part C of title IV (42 U.S.C. 285e et seq.) is amended by adding at the end the following new section:

“CENTERS OF GERIATRIC RESEARCH AND TRAINING

Contracts.
Grants.
42 USC 285e-3.

“SEC. 445A. (a) The Director of the Institute shall enter into cooperative agreements with, and make grants to, public and private nonprofit entities for the development or expansion of centers of excellence in geriatric research and training of researchers.

“(b) Each center developed or expanded under this section shall—
“(1) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director; and
“(2) conduct—

“(A) research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging; and

“(B) programs to develop individuals capable of conducting research concerning aging and concerning such diseases, disorders, and complications.

“(c) In making cooperative agreements and grants under this section for the development or expansion of centers, the Director of the Institute shall ensure that, to the extent practicable, any such centers are distributed equitably among the principal geographic regions of the United States.”.

SEC. 142. TRANSFER OF CERTAIN PROVISIONS WITH RESPECT TO ALZHEIMER'S DISEASE AND RELATED DEMENTIAS.

(a) **IN GENERAL.**—Sections 931, 941, 942, 951, and 952 of the Alzheimer's Disease and Related Dementias Services Research Act of 1986 (42 U.S.C. 11201 et seq.) are—

(1) transferred to subpart 5 of part C of title IV (42 U.S.C. 285e et seq.);

(2) redesignated as sections 445B through 445F, respectively; and

(3) in the appropriate sequence, inserted after section 445A (42 U.S.C. 285e-2).

(b) **AVAILABILITY OF APPROPRIATIONS.**—With respect to amounts made available in appropriation Acts for the purpose of carrying out the programs transferred by subsection (a) to the Public Health Service Act, such subsection may not be construed to affect the availability of such funds for such purpose.

(c) **TECHNICAL AND CONFORMING AMENDMENTS TO ALZHEIMER'S DISEASE AND RELATED DEMENTIAS SERVICES RESEARCH ACT OF 1986.**—

(1) The Alzheimer's Disease and Related Dementias Services Research Act of 1986 (42 U.S.C. 11201 et seq.) is amended—

(A) by striking sections 932 and 953;

(B) by striking the part designation and the heading for part D;

(C) by striking the part designation and the heading for part F;

(D) by redesignating parts E and G as parts D and E, respectively; and

(E) in section 912(b)(1), in the first sentence, by striking “part E” and inserting “part D”.

(2) Part D of of the Alzheimer's Disease and Related Dementias Services Research Act of 1986 (as redesignated by paragraph (1)(D) of this subsection) is amended—

(A) by striking section 943;

(B) by redesignating sections 944 through 949C as sections 931 through 939, respectively;

(C) by striking the subpart designation and the heading for subpart 1; and

(D) by redesignating subparts 2 through 4 as subparts 1 through 3, respectively.

(d) **TECHNICAL AND CONFORMING AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.**—Subpart 5 of part C of title IV (42 U.S.C. 285e et seq.), as amended by subsection (a), is further amended—

(1) in section 445B—

(A) in subsection (a), in the first sentence, by striking “the National Institute on Aging” and inserting “the Institute”;

(B) in subsection (b)—

(i) by striking “the National Institute on Aging” and inserting “the Institute”; and

42 USC 11231,

11241, 11242,

11281, 11282.

42 USC

285e-4—285e-8.

42 USC 285e-4
note.

42 USC 11232,
11283.

42 USC 11212.

42 USC 11243.
42 USC 11251 et
seq., 11261 et
seq., 11271 et seq.

42 USC 285e-4.

- 42 USC 285e-5.
- (ii) by striking “of the Public Health Service Act”;
 - (C) in subsection (c), by striking “the National Institute on Aging” and inserting “the Institute”; and
 - (D) in subsection (d), by striking “the National Institute on Aging” and inserting “the Institute”;
- (2) in section 445C—
- (A) in subsection (a), by striking “the National Institute on Aging” and inserting “the Institute”;
 - (B) in subsection (b)—
 - (i) in paragraph (1), in the first sentence—
 - (I) by striking “this Act” and inserting “the Alzheimer’s Disease and Related Dementias Services Research Act of 1986”; and
 - (II) by striking “the National Institute on Aging” and inserting “the Institute”;
 - (ii) in paragraph (1), in subparagraph (B), by striking “of the Public Health Service Act”; and
 - (iii) in paragraph (2), by striking “the National Institute on Aging” and inserting “the Institute”; and
 - (C) in subsection (c), by striking “the National Institute on Aging” and inserting “the Institute”;
- 42 USC 285e-6.
- (3) in section 445D—
- (A) by striking “the National Institute on Aging” and inserting “the Institute”; and
 - (B) by striking “this subpart” and inserting “section 445C and this section”;
- 42 USC 285e-7.
- (4) in section 445E—
- (A) in subsection (a), by striking “the National Institute on Aging” and inserting “the Institute”; and
 - (B) in subsection (c)—
 - (i) by striking “the National Institute on Aging” and inserting “the Institute”; and
 - (ii) by striking “part E” and inserting “part D”; and
- 42 USC 285e-8.
- (5) in section 445F—
- (A) in subsection (a), by striking “the National Institute on Aging” and inserting “the Institute”; and
 - (B) in subsection (d), in the first sentence, by striking “the National Institute on Aging” and inserting “the Institute”.

Subtitle J—National Library of Medicine

SEC. 146. AUTHORIZATION OF APPROPRIATIONS.

Grants.
Contracts.

- (a) **IN GENERAL.**—The first sentence of section 469 (42 U.S.C. 286b) is amended to read as follows: “For the purpose of grants and contracts under sections 472 through 476, there are authorized to be appropriated \$14,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.”
- (b) **GRANT AMOUNT.**—Section 474(b)(2) (42 U.S.C. 286b-5(b)(2)) is amended by striking out “\$500,000” and inserting in lieu thereof “\$750,000”.

Subtitle K—Awards and Training

SEC. 151. NATIONAL RESEARCH SERVICE AWARDS.

Section 487(d) (42 U.S.C. 288(d)) is amended—

(1) in the matter preceding paragraph (1), by amending the first sentence to read as follows: "For the purpose of making payments under National Research Service Awards and under grants for such Awards, there are authorized to be appropriated \$300,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990."; and

(2) in paragraph (3), by inserting after "made available" the first place it appears the following: "to the Secretary, acting through the Administrator of the Health Resources and Services Administration,".

Grants.
Appropriation
authorization.

Subtitle L—Fetal Research Moratorium

SEC. 156. EXTENSION OF MORATORIUM.

Section 498(c) (42 U.S.C. 289g(c)) is amended—

(1) in paragraph (2), by striking "thirty-six month period beginning on the date of enactment of this section" and inserting "24-month period beginning on the date of the enactment of the National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988"; and

(2) in paragraph (3), by striking "1988" and inserting "1990".

SEC. 157. BOARD AND STUDY.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Section 381(e) (42 U.S.C. 275(e)) is amended by striking "and" after "1987," and inserting before the period the following: ", \$2,000,000 for fiscal year 1989, and \$2,500,000 for fiscal year 1990".

(b) **STUDY.**—Section 498(c)(1) (42 U.S.C. 289g(c)(1)) is amended by striking "thirty months after the date of enactment of this section" and inserting "24 months after the date of the enactment of the National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988".

Subtitle M—Miscellaneous

SEC. 161. STUDY OF THYROID MORBIDITY FOR HANFORD, WASHINGTON.

42 USC 241 note.

(a) **IN GENERAL.**—In carrying out the purposes of section 301 of the Public Health Service Act (42 U.S.C. 241), the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control (hereafter referred to in this section as the "Director"), shall conduct a study of thyroid morbidity of the population (including Indian tribes and tribal organizations) in the vicinity of Hanford, in the State of Washington, during the years 1944 through 1957.

(b) **PEER REVIEW.**—As soon as is practicable after the date of the enactment of this Act, the Director shall establish a peer review committee that shall, along with the Centers for Disease Control, make any determinations as to the conduct of the study required under this section.

(c) **CONTRACTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the Director may contract out any portion of the study required under this section if the Director considers such appropriate, except that such contractor shall not have any direct or indirect

interest in the outcome of such study including, contracts with the Department of Energy.

Contracts.

(2) **RELATIONSHIPS.**—Contractors that currently are parties to contracts with the Department of Energy (or who have previously been parties to such) shall be given consideration pursuant to paragraph (1), except that the Director shall make a determination in each such circumstance that the relationship of the contractor with the Department of Energy does not represent a conflict of interest or the appearance of such a conflict regarding the conduct of the study required under this section.

Oregon.

Washington.

(d) **REPORT.**—Not later than 42 months after the date of enactment of this section, the Director shall transmit a report including such study to the Congress, the chief executive officers of the States of Oregon and Washington, and the governing officials of the Indian tribes in the vicinity of Hanford, Washington.

42 USC 241 note.

SEC. 162. NATIONAL COMMISSION ON SLEEP DISORDERS RESEARCH.

(a) **ESTABLISHMENT.**—Not later than 90 days after the date of enactment of this Act, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), after consultation with the Director of the National Institutes of Health, shall establish a National Commission on Sleep Disorders Research (hereafter in this section referred to as the "Commission").

(b) **COMPOSITION.**—

(1) **APPOINTED MEMBERS.**—The Commission shall be composed of 10 members to be appointed as follows:

(A) Six members shall be appointed by the Secretary from among scientists, physicians, and other health professionals who are not in the employment of the Federal Government, and who have primary expertise in sleep disorders research or medicine.

(B) Two members shall be appointed by the Secretary from the general public, of whom one of which shall have personal or close family experience with sleep disorders.

(C) Two members shall be appointed by the Secretary from among the personnel of the National Institutes of Health, and such members interest shall be in the field of sleep disorders research.

(2) **EX OFFICIO MEMBERS.**—The Director of the National Institutes of Health, the Director of the National Institute of Neurological and Communicative Disorders and Stroke, the Directors of the National Heart, Lung and Blood Institute, the National Institute on Mental Health, the National Institute on Aging, the National Institute on Child Health and Human Development, the Director of the Center for Disease Control, the Chief Medical Director of the Veterans' Administration, and the Secretary of Defense shall be ex officio members of the Commission, or their designees.

(c) **CHAIRPERSON.**—The members of the Commission shall select a Chairperson from among the appointed members of the Commission.

(d) **MEETINGS.**—Not later than 60 days after the establishment of the Commission, the Commission shall meet as directed by the Secretary, and thereafter shall meet at the call of the Chairperson of the Commission, but in no event shall the Commission meet less often than three times during the life of the Commission. The

Commission may hold such hearings, take such testimony, and sit and act at such time and places as the Commission considers appropriate.

(e) PERSONNEL.—

(1) EXECUTIVE SECRETARY.—

(A) APPOINTMENT.—The Commission may appoint and fix the compensation of an executive secretary to effectively carry out the functions of the Commission.

(B) COMPENSATION.—The executive secretary shall be appointed subject to title 5, United States Code, governing appointments in the competitive service, and shall receive compensation in accordance with chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) ADDITIONAL PERSONNEL.—The Secretary shall, to the extent practicable, provide the Commission with such additional professional and clerical staff, such information, and the services of such consultants as the Commission determines to be necessary to carry out its functions effectively.

(f) COMPENSATION.—

(1) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment.

(2) NON-FEDERAL GOVERNMENT MEMBERS.—Members of the Commission who are not officers or employees of the Federal Government shall receive compensation at a rate not to exceed the daily equivalent of the annual rate in effect for Grade GS-18 of the General Schedule for each day (including traveltime) that such members are engaged in the performance of their duties as members of the Commission.

(3) EXPENSES.—All members of the Commission, while serving away from their homes or regular places of business in the performance of services for the Commission, shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in Government Service employed intermittently.

(g) DUTIES.—

(1) STUDY.—The Commission shall—

(A) conduct a comprehensive study of the present state of knowledge of the incidence, prevalence, morbidity, and mortality resulting from sleep disorders, and of the social and economic impact of such disorders;

(B) evaluate the public and private facilities and resources (including trained personnel and research activities) available for the diagnosis, prevention, and treatment of, and research into, such disorders; and

(C) identify programs (including biological, physiological, behavioral, environmental, and social programs) by which improvement in the management and research into sleep disorders can be accomplished.

(2) DEVELOPMENT OF PLAN.—Based on the study conducted under paragraph (1), the Commission shall develop a long-range plan for the use and organization of national resources to effectively deal with sleep disorders research and medicine.

(3) **COOPERATION.**—Each Federal entity administering programs and activities related to sleep disorders shall, on request, assist the Commission in carrying out its duties under this subsection.

(h) **DEVELOPMENT OF ESTIMATES.**—The Commission shall recommend, for each of the Institutes of the National Institutes of Health whose activities are to be affected by the long-range plan, estimates of the expenditures needed to carry out each Institute's part of the overall program. Such estimates shall be prepared for the fiscal year beginning immediately after completion of the plan under subsection (g)(2) and for each of the next 2 fiscal years.

(i) **REPORT.**—Not later than 18 months after the initial meeting of the Commission (as prescribed by subsection (d)), the Commission shall prepare and submit to the appropriate Committees of Congress, a final report describing—

(1) the long-range plan developed under subsection (g);

(2) the expenditure estimates required under subsection (h); and

(3) any recommendations of the Commission for legislation.

(j) **TERMINATION.**—The Commission shall cease to exist on the 30th day following the date of the submission of the final report under subsection (i).

SEC. 163. MISCELLANEOUS AMENDMENTS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

42 USC 242a,
241.

(1)(A) with respect to section 303(a), by transferring the matter after and below paragraph (2) of such section to section 301;

(B) by designating such matter as subsection (d); and

(C) by adding subsection (d) (as so designated) at the end of section 301;

(2) in section 301(d) (as so designated)—

(A) in the first sentence, by striking “research on mental health, including” and inserting the following: “biomedical, behavioral, clinical, or other research (including research on mental health, including”;

(B) by striking “drugs,” and inserting “drugs”;

42 USC 254c.

(3) in section 330, by redesignating the second subsection (j) (as added by section 4 of Public Law 100-386) as subsection (k).

AIDS
Amendments of
1988.

TITLE II—PROGRAMS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

42 USC 201 note. SEC. 200. SHORT TITLE.

This title may be cited as the “AIDS Amendments of 1988”.

Subtitle A—Research Programs

SEC. 201. ESTABLISHMENT OF CERTAIN PROGRAMS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) by redesignating title XXIII as title XXV;

(2) by redesignating sections 2301 through 2303 as sections 2501 through 2503, respectively;

42 USC 300cc—
300cc-2,
300aaa—
300aaa-2.

(3) by redesignating sections 2306 through 2316 as sections 2504 through 2514, respectively; and

(4) by inserting after title XXII the following new title:

42 USC
300cc-15,
300aaa-3—
300aaa-13.

“TITLE XXIII—RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

“PART A—ADMINISTRATION OF RESEARCH PROGRAMS

“SEC. 2301. REQUIREMENT OF ANNUAL COMPREHENSIVE REPORT ON ALL EXPENDITURES BY SECRETARY WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

42 USC 300cc.

“(a) **IN GENERAL.**—Not later than December 1 of each fiscal year, the Secretary shall prepare and submit to the Congress a report on the expenditures by the Secretary of amounts appropriated for the preceding fiscal year with respect to acquired immune deficiency syndrome.

“(b) **INCLUSION OF CERTAIN INFORMATION.**—The report required in subsection (a) shall, with respect to acquired immune deficiency syndrome, include—

“(1) for each program, project, or activity with respect to such syndrome, a specification of the amount obligated by each office and agency of the Department of Health and Human Services;

“(2) a summary description of each such program, project, or activity;

“(3) a list of such programs, projects, or activities that are directed towards members of minority groups;

Minorities.

“(4) a description of the extent to which programs, projects, and activities described in paragraph (3) have been coordinated between the Director of the Office of Minority Health and the Director of the Centers for Disease Control;

“(5) a summary of the progress made by each such program, project, or activity with respect to the prevention and control of acquired immune deficiency syndrome;

“(6) a summary of the evaluations conducted under this title; and

“(7) any report required in this Act to be submitted to the Secretary for inclusion in the report required in subsection (a).

“SEC. 2302. REQUIREMENT OF EXPEDITING AWARDS OF GRANTS AND CONTRACTS FOR RESEARCH.

42 USC 300cc-1.

“(a) **IN GENERAL.**—The Secretary shall expedite the award of grants, contracts, and cooperative agreements for research projects relating to acquired immune deficiency syndrome (including such research projects initiated independently of any solicitation by the Secretary for proposals for such research projects).

“(b) **TIME LIMITATIONS WITH RESPECT TO CERTAIN APPLICATIONS.**—

“(1) With respect to programs of grants, contracts, and cooperative agreements described in subsection (a), any application submitted in response to a solicitation by the Secretary for proposals pursuant to such a program—

“(A) may not be approved if the application is submitted after the expiration of the 3-month period beginning on the date on which the solicitation is issued; and

“(B) shall be awarded, or otherwise finally acted upon, not later than the expiration of the 6-month period begin-

ning on the expiration of the period described in subparagraph (A).

“(2) If the Secretary makes a determination that it is not practicable to administer a program referred to in paragraph (1) in accordance with the time limitations described in such paragraph, the Secretary may adjust the time limitations accordingly.

“(c) **REQUIREMENTS WITH RESPECT TO ADJUSTMENTS IN TIME LIMITATIONS.**—With respect to any program for which a determination described in subsection (b)(2) is made, the Secretary shall—

“(1) if the determination is made before the Secretary issues a solicitation for proposals pursuant to the program, ensure that the solicitation describes the time limitations as adjusted by the determination; and

“(2) if the determination is made after the Secretary issues such a solicitation for proposals, issue a statement describing the time limitations as adjusted by the determination and individually notify, with respect to the determination, each applicant whose application is submitted before the expiration of the 3-month period beginning on the date on which the solicitation was issued.

“(d) **ANNUAL REPORTS TO CONGRESS.**—Except as provided in subsection (e), the Secretary shall annually prepare, for inclusion in the comprehensive report required in section 2301, a report—

“(A) summarizing programs for which the Secretary has made a determination described in subsection (b)(2), including a description of the time limitations as adjusted by the determination and including a summary of the solicitation issued by the Secretary for proposals pursuant to the program; and

“(B) summarizing applications that—

“(i) were submitted pursuant to a program of grants, contracts, or cooperative agreements referred to in paragraph (1) of subsection (b) for which a determination described in paragraph (2) of such subsection has not been made; and

“(ii) were not processed in accordance with the time limitations described in such paragraph (1).

“(e) **QUARTERLY REPORTS FOR FISCAL YEAR 1989.**—For fiscal year 1989, the report required in subsection (d) shall, not less than quarterly, be prepared and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

2 USC 300cc-2.

“**SEC. 2303. REQUIREMENTS WITH RESPECT TO PROCESSING OF REQUESTS FOR PERSONNEL AND ADMINISTRATIVE SUPPORT.**

“(a) **IN GENERAL.**—The Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, shall respond to any priority request made by the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health, not later than 21 days after the date on which such request is made. If the Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, does not disapprove a priority request during the 21-day period, the request shall be deemed to be approved.

“(b) NOTICE TO SECRETARY AND TO ASSISTANT SECRETARY FOR HEALTH.—The Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, and the Director of the National Institutes of Health, shall, respectively, transmit to the Secretary and the Assistant Secretary for Health a copy of each priority request made under this section by the agency head involved. The copy shall be transmitted on the date on which the priority request involved is made.

“(c) DEFINITION OF PRIORITY REQUEST.—For purposes of this section, the term ‘priority request’ means any request that—

“(1) is designated as a priority request by the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Centers for Disease Control, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health; and

“(2)(A) is made to the Director of the Office of Personnel Management for the allocation of personnel to carry out activities with respect to acquired immune deficiency syndrome; or

“(B) is made to the Administrator of General Services for administrative support or space in carrying out such activities.

“SEC. 2304. ESTABLISHMENT OF CLINICAL RESEARCH REVIEW COMMITTEE.

42 USC 300cc-3.

“(a) IN GENERAL.—After consultation with the Commissioner of Food and Drugs, the Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, shall establish within such Institute an advisory committee to be known as the AIDS Clinical Research Review Committee (hereafter in this section referred to as the ‘Committee’).

“(b) COMPOSITION.—The Committee shall be composed of physicians whose clinical practice includes a significant number of patients with acquired immune deficiency syndrome.

“(c) DUTIES.—The Committee shall—

“(1) advise the Director of such Institute on appropriate research activities to be undertaken with respect to clinical treatment of such syndrome, including advice with respect to—

“(A) research on drugs for preventing or minimizing the development of symptoms or conditions arising from infection with the etiologic agent for such syndrome; and

“(B) research on the effectiveness of treating such symptoms or conditions with drugs that—

“(i) are not approved by the Commissioner of Food and Drugs for the purpose of treating such symptoms or conditions; and

“(ii) are being utilized for such purpose by individuals infected with such etiologic agent;

“(2)(A) review ongoing publicly and privately supported research on clinical treatment for acquired immune deficiency syndrome, including research on drugs described in paragraph (1); and

“(B) periodically issue, and make available to health care professionals, reports describing and evaluating such research.

Reports.

“(3) conduct studies and convene meetings for the purpose of determining the recommendations among physicians in clinical practice on clinical treatment of acquired immune deficiency

syndrome, including treatment with the drugs described in paragraph (1); and

“(4) conduct a study for the purpose of developing, with respect to individuals infected with the etiologic agent for acquired immune deficiency syndrome, a consensus among health care professionals on clinical treatments for preventing or minimizing the development of symptoms or conditions arising from infection with such etiologic agent.

“PART B—RESEARCH AUTHORITY

“SEC. 2311. CLINICAL EVALUATION UNITS AT NATIONAL INSTITUTES OF HEALTH.

“(a) IN GENERAL.—The Secretary, acting through the Director of the National Cancer Institute and the Director of the National Institute of Allergy and Infectious Diseases, shall for each such Institute establish a clinical evaluation unit at the Clinical Center at the National Institutes of Health. Each of the clinical evaluation units—

“(1) shall conduct clinical evaluations of experimental treatments for acquired immune deficiency syndrome developed within the preclinical drug development program; and

“(2) may conduct clinical evaluations of experimental treatments for such syndrome that are developed by any other national research institute of the National Institutes of Health or by any other entity.

“(b) PERSONNEL AND ADMINISTRATIVE SUPPORT.—

“(1) For the purposes described in subsection (a), the Secretary, acting through the Director of the National Institutes of Health, shall provide each of the clinical evaluation units required in such subsection—

“(A)(i) with not less than 50 beds; or

“(ii) with an outpatient clinical capacity equal to not less than twice the outpatient clinical capacity, with respect to acquired immune deficiency syndrome, possessed by the Clinical Center of the National Institutes of Health on June 1, 1988; and

“(B) with such personnel, such administrative support, and such other support services as may be necessary.

“(2) Facilities, personnel, administrative support, and other support services provided pursuant to paragraph (1) shall be in addition to the number or level of facilities, personnel, administrative support, and other support services that otherwise would be available at the Clinical Center at the National Institutes of Health for the provision of clinical care for individuals with diseases or disorders.

“(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

“SEC. 2312. USE OF INVESTIGATIONAL NEW DRUGS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

“(a) ENCOURAGEMENT OF APPLICATIONS WITH RESPECT TO CLINICAL TRIALS.—

“(1) If, in the determination of the Secretary, there is preliminary evidence that a new drug has effectiveness in humans with respect to the prevention or treatment of acquired immune

42 USC
300cc-11.

42 USC
300cc-12.

Federal
Register,
publication.

deficiency syndrome, the Secretary shall, through statements published in the Federal Register—

“(A) announce the fact of such determination; and

“(B) with respect to the new drug involved, encourage an application for an exemption for investigational use of the new drug under regulations issued under section 505(i) of the Federal Food, Drug, and Cosmetic Act.

“(2)(A) The AIDS Clinical Research Review Committee established pursuant to section 2304 shall make recommendations to the Secretary with respect to new drugs appropriate for determinations described in paragraph (1).

“(B) The Secretary shall, as soon as is practicable, determine the merits of recommendations received by the Secretary pursuant to subparagraph (A).

“(b) ENCOURAGEMENT OF APPLICATIONS WITH RESPECT TO TREATMENT USE IN CIRCUMSTANCES OTHER THAN CLINICAL TRIALS.—

“(1) In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) and with respect to which an exemption is in effect for purposes of section 505(i) of the Federal Food, Drug, and Cosmetic Act, the Secretary shall—

“(A) as appropriate, encourage the sponsor of the investigation of the new drug to submit to the Secretary, in accordance with regulations issued under such section, an application to use the drug in the treatment of individuals—

“(i) who are infected with the etiologic agent for acquired immune deficiency syndrome; and

“(ii) who are not participating in the clinical trials conducted pursuant to such exemption; and

“(B) if such an application is approved, encourage, as appropriate, licensed medical practitioners to obtain, in accordance with such regulations, the new drug from such sponsor for the purpose of treating such individuals.

“(2) If the sponsor of the investigation of a new drug described in paragraph (1) does not submit to the Secretary an application described in such paragraph (relating to treatment use), the Secretary shall, through statements published in the Federal Register, encourage, as appropriate, licensed medical practitioners to submit to the Secretary such applications in accordance with regulations described in such paragraph.

Federal
Register,
publication.

“(c) TECHNICAL ASSISTANCE WITH RESPECT TO TREATMENT USE.—In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a), the Secretary may, directly or through grants or contracts, provide technical assistance with respect to the process of—

Grants.
Contracts.

“(1) submitting to the Secretary applications for exemptions described in paragraph (1)(B) of such subsection;

“(2) submitting to the Secretary applications described in subsection (b); and

“(3) with respect to sponsors of investigations of new drugs, facilitating the transfer of new drugs from such sponsors to licensed medical practitioners.

“(d) DEFINITION.—For purposes of this section, the term “new drug” has the meaning given such term in section 201 of the Federal Food, Drug, and Cosmetic Act.

42 USC
300cc-13.

Grants.
Contracts.

Health care
professionals.

Minorities.
Women.
Children and
youth.

"SEC. 2313. COMMUNITY-BASED EVALUATIONS OF EXPERIMENTAL THERAPIES.

"(a) IN GENERAL.—After consultation with the Commissioner of Food and Drugs, the Director of the National Institutes of Health, acting through the National Institute of Allergy and Infectious Diseases, may make grants to public entities and nonprofit private entities concerned with acquired immune deficiency syndrome, and may enter into contracts with public and private such entities, for the purpose of planning and conducting, in the community involved, clinical trials of experimental treatments for infection with the etiologic agent for such syndrome that are approved by the Commissioner of Food and Drugs for investigational use under regulations issued under section 505 of the Federal Food, Drug, and Cosmetic Act.

"(b) REQUIREMENT OF CERTAIN PROJECTS.—

"(1) Financial assistance under subsection (a) shall include such assistance to community-based organizations and community health centers for the purpose of—

"(A) retaining appropriate medical supervision;

"(B) assisting with administration, data collection and record management; and

"(C) conducting training of community physicians, nurse practitioners, physicians' assistants and other health professionals for the purpose of conducting clinical trials.

"(2)(A) Financial assistance under subsection (a) shall include such assistance for demonstration projects designed to implement and conduct community-based clinical trials in order to provide access to the entire scope of communities affected by infections with the etiologic agent for acquired immune deficiency syndrome, including minorities, hemophiliacs and transfusion-exposed individuals, women, children, users of intravenous drugs, and individuals who are asymptomatic with respect to such infection.

"(B) The Director of the National Institutes of Health may not provide financial assistance under this paragraph unless the application for such assistance is approved—

"(i) by the Commissioner of Food and Drugs;

"(ii) by a duly constituted Institutional Review Board that meets the requirements of part 56 of title 21, Code of Federal Regulations; and

"(iii) by the Director of the National Institute of Allergy and Infectious Diseases.

"(c) PARTICIPATION OF PRIVATE INDUSTRY AND SCHOOLS OF MEDICINE.—Programs carried out with financial assistance provided under subsection (a) shall be designed to encourage private industry and schools of medicine to participate in, and to support, the clinical trials conducted pursuant to the programs.

"(d) REQUIREMENT OF APPLICATION.—The Secretary may not provide financial assistance under subsection (a) unless—

"(1) an application for the assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the assistance is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and

information as the Secretary determines to be necessary to carry out this section.

“(e) AUTHORIZATION OF APPROPRIATIONS.—

“(1) For the purpose of carrying out subsection (b)(1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

“(2) For the purpose of carrying out subsection (b)(2), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

“SEC. 2314. EVALUATION OF CERTAIN TREATMENTS.

42 USC
300cc-14.

“(a) ESTABLISHMENT OF PROGRAM.—

“(1) After consultation with the Clinical Research Review Committee established pursuant to section 2304, the Secretary shall establish a program for the evaluation of drugs that—

“(A) are not approved by the Commissioner of Food and Drugs for the purpose of treatments with respect to acquired immune deficiency syndrome; and

“(B) are being utilized for such purpose by individuals infected with the etiologic agent for such syndrome.

“(2) The program established under paragraph (1) shall include evaluations of the effectiveness and the risks of the treatment involved, including the risks of foregoing treatments with respect to acquired immune deficiency syndrome that are approved by the Commissioner of Food and Drugs.

“(b) AUTHORITY WITH RESPECT TO GRANTS AND CONTRACTS.—

“(1) For the purpose of conducting evaluations required in subsection (a), the Secretary may make grants to, and enter into cooperative agreements and contracts with, public and non-profit private entities.

“(2) Nonprofit private entities under paragraph (1) may include nonprofit private organizations that—

“(A) are established for the purpose of evaluating treatments with respect to acquired immune deficiency syndrome; and

“(B) consist primarily of individuals infected with the etiologic agent for such syndrome.

“(c) SCIENTIFIC AND ETHICAL GUIDELINES.—

“(1) The Secretary shall establish appropriate scientific and ethical guidelines for the conduct of evaluations carried out pursuant to this section. The Secretary may not provide financial assistance under subsection (b)(1) unless the applicant for such assistance agrees to comply with such guidelines.

“(2) The Secretary may establish the guidelines described in paragraph (1) only after consulting with—

“(A) physicians whose clinical practice includes a significant number of individuals with acquired immune deficiency syndrome;

“(B) individuals who are infected with the etiologic agent for such syndrome; and

“(C) other individuals with appropriate expertise or experience.

“(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

42 USC
800cc-15.

"SEC. 2315. SUPPORT OF INTERNATIONAL EFFORTS.

"(a) GRANTS AND CONTRACTS FOR RESEARCH.—

"(1) Under section 307, the Secretary, acting through the Director of the National Institutes of Health—

"(A) shall, for the purpose described in paragraph (2), make grants to, enter into cooperative agreements and contracts with, and provide technical assistance to, international organizations concerned with public health; and

"(B) may, for such purpose, provide technical assistance to foreign governments.

"(2) The purpose referred to in paragraph (1) is promoting and expediting international research concerning the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome.

"(b) GRANTS AND CONTRACTS FOR ADDITIONAL PURPOSES.—After consultation with the Administrator of the Agency for International Development, the Secretary, acting through the Director of the Centers for Disease Control, shall under section 307 make grants to, enter into contracts with, and provide technical assistance to, international organizations concerned with public health and may provide technical assistance to foreign governments, in order to support—

"(1) projects for training individuals with respect to developing skills and technical expertise for use in the prevention, diagnosis, and treatment of acquired immune deficiency syndrome; and

"(2) epidemiological research relating to acquired immune deficiency syndrome.

"(c) SPECIAL PROGRAMME OF WORLD HEALTH ORGANIZATION.—Support provided by the Secretary pursuant to this section shall be in furtherance of the global strategy of the World Health Organization Special Programme on Acquired Immunodeficiency Syndrome.

"(d) PREFERENCES.—In providing grants, cooperative agreements, contracts, and technical assistance under subsections (a) and (b), the Secretary shall—

"(1) give preference to activities under such subsections conducted by, or in cooperation with, the World Health Organization; and

"(2) with respect to activities carried out under such subsections in the Western Hemisphere, give preference to activities conducted by, or in cooperation with, the Pan American Health Organization or the World Health Organization.

"(e) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant or enter into a cooperative agreement or contract under this section unless—

"(1) an application for such assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which such assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(f) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated

\$40,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

“SEC. 2316. RESEARCH CENTERS.

42 USC
300cc-16.

“(a) IN GENERAL.—

Grants.
Contracts.

“(1) The Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to, and enter into contracts with, public and nonprofit private entities to assist such entities in planning, establishing, or strengthening, and providing basic operating support for, centers for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immune deficiency syndrome.

“(2) A grant or contract under paragraph (1) shall be provided in accordance with policies established by the Secretary, acting through the Director of the National Institutes of Health, and after consultation with the advisory council for the National Institute of Allergy and Infectious Diseases.

“(3) The Secretary shall ensure that, as appropriate, clinical research programs carried out under paragraph (1) include as research subjects women, children, hemophiliacs, and minorities.

“(b) USE OF FINANCIAL ASSISTANCE.—

“(1) Financial assistance under subsection (a) may be expended for—

“(A) the renovation or leasing of space;

“(B) staffing and other basic operating costs, including such patient care costs as are required for clinical research;

“(C) clinical training with respect to acquired immune deficiency syndrome (including such training for allied health professionals); and

“(D) demonstration purposes, including projects in the long-term monitoring and outpatient treatment of individuals infected with the etiologic agent for such syndrome.

“(2) Financial assistance under subsection (a) may not be expended to provide research training for which National Research Service Awards may be provided under section 487.

“(c) DURATION OF SUPPORT.—Support of a center under subsection (a) may be for not more than five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

“(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

“SEC. 2317. INFORMATION SERVICES.

42 USC
300cc-17.

“(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish, maintain, and operate a program with respect to information on research, treatment, and prevention activities relating to infection with the etiologic agent for acquired immune deficiency syndrome. The program shall, with respect to the agencies of the Department of Health and Human Services, be integrated and coordinated.

“(b) TOLL-FREE TELEPHONE COMMUNICATIONS FOR HEALTH CARE ENTITIES.—

"(1) After consultation with the Director of the Office of AIDS Research, the Administrator of the Health Resources and Services Administration, and the Director of the Centers for Disease Control, the Secretary shall provide for toll-free telephone communications to provide medical and technical information with respect to acquired immune deficiency syndrome to health care professionals, allied health care providers, and to professionals providing emergency health services.

"(2) Information provided pursuant to paragraph (1) shall include—

"(A) information on prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome; and

"(B) information contained in the data banks established in subsections (c) and (d).

"(c) DATA BANK ON RESEARCH INFORMATION.—

"(1) After consultation with the Director of the Office of AIDS Research, the Director of the Centers for Disease Control, and the National Library of Medicine, the Secretary shall establish a data bank of information on the results of research with respect to acquired immune deficiency syndrome conducted in the United States and other countries.

"(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. To the extent practicable, the Secretary shall make such information available to researchers, physicians, and other appropriate individuals, of countries other than the United States.

"(d) DATA BANK ON CLINICAL TRIALS AND TREATMENTS.—

"(1) After consultation with the Commissioner of Food and Drugs, the Clinical Research Review Committee, and the Director of the Office of AIDS Research, the Secretary shall, in carrying out subsection (a), establish a data bank of information on clinical trials and treatments with respect to infection with the etiologic agent for acquired immune deficiency syndrome (hereafter in this section referred to as the 'Data Bank').

"(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. The Secretary shall disseminate such information through information systems available to individuals infected with the etiologic agent for acquired immune deficiency syndrome, to other members of the public, to health care providers, and to researchers.

"(e) REQUIREMENTS WITH RESPECT TO DATA BANK.—The Data Bank shall include the following:

"(1) A registry of clinical trials of experimental treatments for acquired immune deficiency syndrome and related illnesses conducted under regulations promulgated pursuant to section 505 of the Federal Food, Drug and Cosmetic Act that provides a description of the purpose of each experimental drug protocol either with the consent of the protocol sponsor, or when a trial to test efficacy begins. Information provided shall include eligibility criteria and the location of trial sites, and must be forwarded to the Data Bank by the sponsor of the trial not later than 21 days after the approval by the Food and Drug Administration.

"(2) Information pertaining to experimental treatments for acquired immune deficiency syndrome that may be available under a treatment investigational new drug application that has been submitted to the Food and Drug Administration pursuant to part 312 of title 21, Code of Federal Regulations. The Data Bank shall also include information pertaining to the results of clinical trials of such treatments, with the consent of the sponsor, of such experimental treatments, including information concerning potential toxicities or adverse effects associated with the use or administration of such experimental treatment.

"SEC. 2318. DEVELOPMENT OF MODEL PROTOCOLS FOR CLINICAL CARE OF INFECTED INDIVIDUALS.

42 USC
300cc-18.

"(a) IN GENERAL.—

"(1) The Secretary may make grants to public and nonprofit private entities for the establishment of projects to develop model protocols for the clinical care of individuals infected with the etiologic agent for acquired immune deficiency syndrome.

Grants.

"(2) The Secretary may not make a grant under paragraph (1) unless—

"(A) the applicant for the grant is a provider of comprehensive primary care; or

"(B) the applicant for the grant agrees, with respect to the project carried out pursuant to paragraph (1), to enter into a cooperative arrangement with an entity that is a provider of comprehensive primary care.

"(b) REQUIREMENT OF PROVISION OF CERTAIN SERVICES.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, with respect to patients participating in the project carried out with the grant, services provided pursuant to the grant will include—

"(1) monitoring, in clinical laboratories, of the condition of such patients;

"(2) clinical intervention for infection with the etiologic agent for acquired immune deficiency syndrome, including measures for the prevention of conditions arising from the infection;

"(3) information and counseling on the availability of treatments for such infection approved by the Commissioner of Food and Drugs, on the availability of treatments for such infection not yet approved by the Commissioner, and on the reports issued by the Clinical Research Review Committee under section 2304(c)(2)(B);

"(4) support groups; and

"(5) information on, and referrals to, entities providing appropriate social support services.

"(c) LIMITATION ON IMPOSITION OF CHARGES FOR SERVICES.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, if the applicant will routinely impose a charge for providing services pursuant to the grant, the applicant will not impose the charge on any individual seeking such services who is unable to pay the charge.

"(d) EVALUATION AND REPORTS.—

"(1) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the project carried out pursuant to subsection (a), to submit to the Secretary—

“(A) information sufficient to assist in the replication of the model protocol developed pursuant to the project; and

“(B) such reports as the Secretary may require.

“(2) The Secretary shall provide for evaluations of projects carried out pursuant to subsection (a) and shall annually submit to the Congress a report describing such projects. The report shall include the findings made as a result of such evaluations and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to the program established in this section.

“(e) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

“**SEC. 2319. NATIONAL BLOOD RESOURCE EDUCATION PROGRAM.**

“After consultation with the Director of the National Heart, Lung, and Blood Institute and the Commissioner of Food and Drugs, the Secretary shall establish a program of research and education regarding blood donations and transfusions to maintain and improve the safety of the blood supply. Education programs shall be directed at health professionals, patients, and the community to—

“(1) in the case of the public and patients undergoing treatment—

“(A) increase awareness that the process of donating blood is safe;

“(B) promote the concept that blood donors are contributors to a national need to maintain an adequate and safe blood supply;

“(C) encourage blood donors to donate more than once a year; and

“(D) encourage repeat blood donors to recruit new donors;

“(2) in the case of health professionals—

“(A) improve knowledge, attitudes, and skills of health professionals in the appropriate use of blood and blood components;

“(B) increase the awareness and understanding of health professionals regarding the risks versus benefits of blood transfusion; and

“(C) encourage health professionals to consider alternatives to the administration of blood or blood components for their patients; and

“(3) in the case of the community, increase coordination, communication, and collaboration among community, professional, industry, and government organizations regarding blood donation and transfusion issues.

“**SEC. 2320. ADDITIONAL AUTHORITY WITH RESPECT TO RESEARCH.**

“(a) **DATA COLLECTION WITH RESPECT TO NATIONAL PREVALENCE.**—

“(1) The Secretary, acting through the Director of the Centers for Disease Control, may, through representative sampling and other appropriate methodologies, provide for the continuous collection of data on the incidence in the United States of cases of acquired immune deficiency syndrome and of cases of infection with the etiologic agent for such syndrome. The Secretary may carry out the program of data collection directly or

42 USC
300cc-19.
Research and
development.

42 USC
300cc-20.
Contracts.
Grants.

through cooperative agreements and contracts with public and nonprofit private entities.

“(2) The Secretary shall encourage each State to enter into a cooperative agreement or contract under paragraph (1) with the Secretary in order to facilitate the prompt collection of the most recent accurate data on the incidence of cases described in such paragraph.

“(3) The Secretary shall ensure that data collected under paragraph (1) includes data on the demographic characteristics of the population of individuals with cases described in paragraph (1), including data on specific subpopulations at risk of infection with the etiologic agent for acquired immune deficiency syndrome.

“(4) In carrying out this subsection, the Secretary shall, for the purpose of assuring the utility of data collected under this section, request entities with expertise in the methodologies of data collection to provide, as soon as is practicable, assistance to the Secretary and to the States with respect to the development and utilization of uniform methodologies of data collection.

“(5) The Secretary shall provide for the dissemination of data collected pursuant to this section. In carrying out this paragraph, the Secretary may publish such data as frequently as the Secretary determines to be appropriate with respect to the protection of the public health. The Secretary shall publish such data not less than once each year.

“(b) EPIDEMIOLOGICAL AND DEMOGRAPHIC DATA.—

“(1) The Secretary, acting through the Director of the Centers for Disease Control, shall develop an epidemiological data base and shall provide for long-term studies for the purposes of—

“(A) collecting information on the demographic characteristics of the population of individuals infected with the etiologic agent for acquired immune deficiency syndrome; and

“(B) developing models demonstrating the long-term domestic and international patterns of the transmission of such etiologic agent.

“(2) The Secretary may carry out paragraph (1) directly or through grants to, or cooperative agreements or contracts with, public and nonprofit private entities, including Federal agencies.

“(c) LONG-TERM RESEARCH.—The Secretary may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting long-term research into treatments for acquired immune deficiency syndrome developed from knowledge of the genetic nature of the etiologic agent for such syndrome.

“(d) SOCIAL SCIENCES RESEARCH.—The Secretary, acting through the Director of the National Institute of Mental Health, may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

“(e) AUTHORIZATION OF APPROPRIATIONS.—

“(1) For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

“(2) Amounts appropriated pursuant to paragraph (1) to carry out subsection (c) shall remain available until expended.

“PART C—RESEARCH TRAINING**“SEC. 2341. FELLOWSHIPS AND TRAINING.**

2 USC
00cc-31.
health care
professionals.

“(a) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control, shall establish fellowship and training programs to be conducted by the Centers for Disease Control to train individuals to develop skills in epidemiology, surveillance, testing, counseling, education, information, and laboratory analysis relating to acquired immune deficiency syndrome. Such programs shall be designed to enable health professionals and health personnel trained under such programs to work, after receiving such training, in national and international efforts toward the prevention, diagnosis, and treatment of acquired immune deficiency syndrome.

“(b) **PROGRAMS CONDUCTED BY NATIONAL INSTITUTE OF MENTAL HEALTH.**—The Secretary, acting through the Director of the National Institute of Mental Health, shall conduct or support fellowship and training programs for individuals pursuing graduate or postgraduate study in order to train such individuals to conduct scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

“(c) **RELATIONSHIP TO LIMITATION ON NUMBER OF EMPLOYEES.**—Any individual receiving a fellowship or receiving training under subsection (a) or (b) shall not be included in any determination of the number of full-time equivalent employees of the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after the date of the enactment of the AIDS Federal Policy Act of 1988.

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

“PART D—SPECIAL AUTHORITIES OF THE DIRECTOR OF THE NATIONAL INSTITUTES OF HEALTH**“SEC. 2351. ESTABLISHMENT OF AUTHORITIES.**

42 USC
300cc-41.

“(a) **IN GENERAL.**—In carrying out research with respect to acquired immune deficiency syndrome, the Secretary, acting through the Director of the National Institutes of Health—

“(1)(A) shall establish an office to be known as the Office of AIDS Research, which Office shall be headed by a Director appointed by the Director of the National Institutes of Health; and

“(B) shall provide administrative support and support services to the Director of such Office;

“(2) shall coordinate activities relating to acquired immune deficiency syndrome conducted by the national research institutes and the agencies of the National Institutes of Health;

“(3) shall develop and expand clinical trials of treatments and therapies for infection with the etiologic agent for acquired immune deficiency syndrome, including such clinical trials for women, infants, children, hemophiliacs, and minorities;

“(4) may establish or support the large-scale development and preclinical screening, production, or distribution of specialized biological materials and other therapeutic substances for

research relating to acquired immune deficiency syndrome and set standards of safety and care for persons using such materials;

“(5) may, in consultation with the advisory council for the appropriate national research institute of the National Institutes of Health, support—

“(A) research relating to acquired immune deficiency syndrome conducted outside the United States by qualified foreign professionals if such research can reasonably be expected to benefit the people of the United States;

“(B) collaborative research involving American and foreign participants; and

“(C) the training of American scientists abroad and foreign scientists in the United States;

“(6) may encourage and coordinate research relating to acquired immune deficiency syndrome conducted by any industrial concern that evidences a particular capability for the conduct of such research;

“(7)(A) may, in consultation with such advisory council, acquire, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director of the National Institutes of Health determines necessary;

Real property.

“(B) may, in consultation with such advisory council, make grants for the construction or renovation of facilities; and

Grants.

“(C) may, in consultation with such advisory council, acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34) by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the National Institutes of Health for a period not to exceed ten years; and

District of Columbia.
Public buildings and grounds.

“(8) subject to section 405(b)(2) and without regard to section 3324 of title 31, United States Code, and section 3709 of the Revised Statutes (41 U.S.C. 5), may enter into such contracts and cooperative agreements with any public agency, or with any person, firm, association, corporation, or educational institution, as may be necessary to expedite and coordinate research relating to acquired immune deficiency syndrome.

Contracts.

“(b) **REPORT TO SECRETARY.**—The Director of the National Institutes of Health, acting through the Director of the Office of AIDS Research, shall each fiscal year prepare and submit to the Secretary, for inclusion in the comprehensive report required in section 2301(a), a report—

“(1) describing and evaluating the progress made in such fiscal year in research, treatment, and training with respect to acquired immune deficiency syndrome conducted or supported by the Institutes;

“(2) summarizing and analyzing expenditures made in such fiscal year for activities with respect to acquired immune deficiency syndrome conducted or supported by the National Institutes of Health; and

“(3) containing such recommendations as the Director considers appropriate.

“(c) **PROJECTS FOR COOPERATION AMONG PUBLIC AND PRIVATE HEALTH ENTITIES.**—In carrying out subsection (a), the Director of the National Institutes of Health shall establish projects to promote

State and local governments.
Research and development.

cooperation among Federal agencies, State, local, and regional public health agencies, and private entities, in research concerning the diagnosis, prevention, and treatment of acquired immune deficiency syndrome.

“PART E—GENERAL PROVISIONS

42 USC
300cc-51.

“SEC. 2361. DEFINITION.

“For purposes of this title, the term ‘infection with the etiologic agent for acquired immune deficiency syndrome’ includes any condition arising from infection with such etiologic agent.”.

SEC. 202. AUTHORIZATION OF ADDITIONAL PERSONNEL.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, the Secretary of Health and Human Services, shall, in accordance with the civil service and classification laws, appoint and fix the compensation of not less than 780 employees for the Public Health Service in addition to the number of employees assigned to such Service as of December 31, 1987.

(b) **REPORT.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall report to the Congress on the allocation among the agencies of the Public Health Service of the 780 additional employees required in subsection (a).

(c) **LIMITATION OF AVAILABILITY OF APPROPRIATIONS.**—The requirement established in subsection (a) shall be carried out only to the extent of amounts made available in appropriations Acts for such purpose.

(d) **EXPIRATION OF REQUIREMENT.**—Effective October 1, 1990, this section is repealed.

42 USC 300cc
note.

SEC. 203. REQUIREMENT OF CERTAIN RESEARCH STUDIES.

(a) **MORTALITY RATES.**—After consultation with the Director of the National Center for Health Services Research and Health Care Technology Assessment, the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall conduct a study for the purpose of determining the mortality rates with respect to acquired immune deficiency syndrome among individuals of various groups at risk of such syndrome, among various geographic areas, and among individuals with varying financial resources for the payment of health care services.

(b) **USE OF CONSORTIA FOR RESEARCH AND DEVELOPMENT.**—The Secretary of Health and Human Services shall request the National Academy of Sciences and other similar appropriate nonprofit institutions to report to the Secretary findings made by such institutions with respect to—

(1) the manner in which research on, and the development of, vaccines and drugs for the prevention and treatment of acquired immune deficiency syndrome and related conditions can be enhanced by the establishment of consortia—

(A) designed to combine and share resources needed for such research and development; and

(B) consisting of businesses involved in such research and development, of nonprofit research institutions, or of combinations of such businesses and such institutions; and

(2) the appropriate participation, if any, of the Federal Government in such consortia.

(c) **REPORTS TO CONGRESS.**—The Secretary of Health and Human Services shall submit to the Congress a report describing the findings made as a result of each of the studies required or requested in this section. The report for the study required in subsection (a) shall be submitted not later than 18 months after the date of the enactment of this Act. The report for the study requested in subsection (b) shall be submitted not later than 1 year after such date.

SEC. 204. CONFORMING AMENDMENTS.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) in section 305(i), by striking “2313” each place it appears and inserting “2511”;

(2) in section 465(f), by striking “2301” and inserting “2501”; and

(3) in section 497, by striking “2301” and inserting “2501”.

Subtitle B—Health Services

SEC. 211. STATE FORMULA GRANTS, SUBACUTE CARE, AND COUNSELING AND TESTING.

The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 201, is further amended by inserting after title XXIII the following new title:

“TITLE XXIV—HEALTH SERVICES WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

“PART A—FORMULA GRANTS TO STATES FOR HOME AND COMMUNITY-BASED HEALTH SERVICES

“SEC. 2401. ESTABLISHMENT OF PROGRAM.

42 USC 300dd.

“(a) **ALLOTMENTS FOR STATES.**—For the purpose described in subsection (b), the Secretary shall for each of the fiscal years 1989 and 1990 make an allotment for each State in an amount determined in accordance with section 2408. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 2407.

“(b) **PURPOSE OF GRANTS.**—The Secretary may not make payments under subsection (a) for a fiscal year unless the State involved agrees to expend the payments only for the purpose of providing services in accordance with section 2402.

“(c) **ELIGIBLE INDIVIDUAL DEFINED.**—For purposes of this part:

“(1) The term ‘eligible individual’ means an individual infected with the etiologic agent for acquired immune deficiency syndrome who either is medically dependent or chronically dependent.

“(2) The term ‘medically dependent’ means, with respect to an individual, that the individual has been certified by a physician as—

“(A) requiring the routine use of appropriate medical services (which may include home intravenous drug therapy) to prevent or compensate for the individual's serious deterioration, arising from infection with the etiologic agent for acquired immune deficiency syndrome, of physical health or cognitive function, and

“(B) being able to avoid long-term or repeated care as an inpatient or resident in a hospital, nursing facility, or other institution if home and community-based health services are provided to the individual.

“(3) The term ‘chronically dependent’ means, with respect to an individual, that the individual has been certified by a physician as—

“(A) being unable to perform, because of physical or cognitive impairment (without substantial assistance from another individual) arising from infection with the etiologic agent for acquired immune deficiency syndrome, at least 2 of the following activities of daily living: bathing, dressing, toileting, transferring, and eating, or

“(B) having a similar level of disability due to cognitive impairment (as defined by the Secretary).

“(d) HOME AND COMMUNITY-BASED HEALTH SERVICES DEFINED.—For purposes of this part, the term ‘home and community-based health services’—

“(1) means, with respect to an eligible individual, skilled health services furnished to the individual in the individual’s home pursuant to a written plan of care established by a health care professional for the provision of such services and items and services described in paragraph (2);

“(2) includes—

“(A) durable medical equipment,

“(B) homemaker/home health aide services and personal care services furnished in the individual’s home,

“(C) day treatment or other partial hospitalization services,

“(D) home intravenous drug therapy (including prescription drugs administered intravenously as part of such therapy), and

“(E) routine diagnostic tests administered in the individual’s home, furnished pursuant to such plan of care; but

“(3) does not include, except as specifically provided in paragraph (2)—

“(A) diagnostic tests,

“(B) inpatient hospital services,

“(C) nursing facility services, and

“(D) prescription drugs.

42 USC 300dd-1. “SEC. 2402. PROVISIONS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.

“(a) REQUIRED USES OF FUNDS.—The Secretary may not make payments under section 2401(a) unless the State involved agrees that the State will—

“(1) provide for home and community-based health services for eligible individuals pursuant to written plans of care established by health care professionals for providing such services to such individuals;

“(2) provide for the identification, location, and provision of outreach to eligible individuals;

“(3) provide for coordinating the provision of services under this part with the provision of similar or related services by public and private entities; and

“(4) give priority to the provision of outreach and home and community-based services to eligible individuals with low incomes.

“(b) **AUTHORITY FOR GRANTS AND CONTRACTS.**—A State may make payment for services under subsection (a) through grants to public and nonprofit private entities and through contracts with public and private entities. In providing such financial assistance, a State shall give priority to public and nonprofit private entities that have demonstrated experience in delivering home and community-based health services to individuals with the etiologic agent for acquired immune deficiency syndrome.

“SEC. 2403. REQUIREMENT OF SUBMISSION OF DESCRIPTION OF INTENDED USES OF GRANT. 42 USC 300dd-2.

“The Secretary may not make payments under section 2401(a) to a State for a fiscal year unless—

“(1) the State submits to the Secretary a description of the purposes for which the State intends to expend such payments for the fiscal year;

“(2) such description provides information relating to the services and activities to be provided, including a description of the manner in which such services and activities will be coordinated with any similar services and activities of public and private entities; and

“(3) such description includes information relating to (A) the process for determining which eligible individuals are medically dependent or chronically dependent and (B) the process for establishing written plans of care for the provision of home and community-based health services under this part.

“SEC. 2404. RESTRICTIONS ON USE OF GRANT. 42 USC 300dd-3.

“(a) **IN GENERAL.**—The Secretary may not make payments under section 2401(a) for a fiscal year to a State unless the State agrees that the payments will not be expended—

“(1) to provide for items or services described in section 2401(d)(3);

“(2) to make cash payments to intended recipients of services;

“(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

“(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

“(b) **LIMITATION ON ADMINISTRATIVE EXPENSES.**—The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments made to the State under such section for administrative expenses with respect to carrying out the purpose of this part.

Real property.

“(c) **LIMITATION ON TOTAL PAYMENTS.**—

“(1) Before March 1, 1989, for fiscal year 1989 and before September 1 of 1989 for fiscal year 1990, the Secretary shall determine and publish the national average monthly payments, for extended care services under part A of title XVIII of the Social Security Act, for each resident of a skilled nursing facility the Secretary estimates will be paid in the fiscal year.

“(2) The Secretary may not make payments under section 2401(a) for a fiscal year to a State to the extent that the average

monthly payments for eligible individuals provided home and community-based health services under this part in the State exceeds 65 percent of the national average monthly payments determined and published for the fiscal year under paragraph (1).

42 USC 300dd-4. "SEC. 2405. REQUIREMENT OF REPORTS AND AUDITS BY STATES.

"(a) REPORTS.—

"(1) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees to prepare and submit to the Secretary, by not later than January 1 following the fiscal year, an annual report in such form and containing such information as the Secretary determines (after consultation with the States and the Comptroller General of the United States) to be necessary for—

"(A) securing a record and a description of the purposes for which payments received by the State pursuant to section 2401(a) were expended and of the recipients of such payments;

"(B) determining whether the payments were expended in accordance with the purpose of this part; and

"(C) determining the percentage of payments received pursuant to section 2401(a) that were expended by the State for administrative expenses during the fiscal year involved.

"(2) Each report by a State under paragraph (1) for a fiscal year also shall include—

"(A) information on the number and type of eligible individuals provided home and community-based health services by the State under this part for the fiscal year;

"(B) information on the types of home and community-based health services so provided;

"(C) information on the average monthly costs of such services and a comparison of such costs with costs of providing services in hospitals, nursing facilities, and similar institutions; and

"(D) such other information as the Secretary may require to provide for an evaluation of the program under this part and its cost-effectiveness.

"(b) AUDITS.—

"(1) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of, and accounting for, amounts received by the State under such section.

"(2) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that—

"(A) the State will provide for—

"(i) a financial and compliance audit of such payments; or

"(ii) a single financial and compliance audit of each entity administering such payments;

"(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

"(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United

States for the audit of governmental organizations, programs, activities, and functions.

“(3) The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

“(4) For purposes of paragraph (2), the term ‘financial and compliance audit’ means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

“(c) **AVAILABILITY TO PUBLIC.**—The Secretary may not make payments under section 2401(a) unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

“(d) **EVALUATIONS BY COMPTROLLER GENERAL.**—The Comptroller General of the United States shall, from time to time, evaluate the expenditures by the States of payments under section 2401(a) in order to assure that expenditures are consistent with the provisions of this part.

“SEC. 2406. ADDITIONAL REQUIRED AGREEMENTS.

42 USC 300dd-5.

“(a) **IN GENERAL.**—The Secretary may not make payments under section 2401(a) for a fiscal year unless the State involved agrees that—

“(1) the legislature of the State will conduct public hearings on the proposed use and distribution of the payments to be received from the allotments for each such fiscal year;

“(2)(A) the State will, to the maximum extent practicable, ensure that services provided to an individual pursuant to the program involved will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual;

“(B) if any charges are imposed for the provision of home and community-based health services for which assistance is provided under this part, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed on any eligible individual with an income that does not exceed 100 percent of the official poverty line, and (iii) for an eligible individual with an income that exceeds 100 percent of the official poverty line, will be adjusted to reflect the income of the individual;

“(3) the State will provide for periodic independent peer review to assess the quality and appropriateness of home and community-based health services provided by entities that receive funds from the State pursuant to section 2401(a);

“(4) the State will permit and cooperate with Federal investigations undertaken under section 2409(e);

“(5) the State will maintain State expenditures for home and community-based health services for individuals infected with the etiologic agent for acquired immune deficiency syndrome at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding

the fiscal year for which the State is applying to receive payments; and

“(6) the State will not make payments from allotments made under section 2401(a) for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (i) under any State compensation program, under an insurance policy, under any Federal or State health benefits program, or (ii) by an entity that provides health services on a prepaid basis.

42 USC 300dd-6. **“SEC. 2407. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.**

“The Secretary may not make payments under section 2401(a) to a State for a fiscal year unless—

“(1) the State submits to the Secretary an application for the payments containing agreements in accordance with sections 2401 through 2406;

“(2) the agreements are made through certification from the chief executive officer of the State;

“(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

“(4) the application contains the description of intended expenditures required in section 2403; and

“(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

42 USC 300dd-7. **“SEC. 2408. DETERMINATION OF AMOUNT OF ALLOTMENTS FOR STATES.**

“(a) **MINIMUM ALLOTMENT.**—Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 2401(a) for—

“(1) each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, for a fiscal year shall be the greater of—

“(A) \$100,000, and

“(B) an amount determined under subsection (b); and

“(2) each territory of the United States (as defined in section 2413(5)) shall be \$25,000.

“(b) DETERMINATION UNDER FORMULA.—

“(1) The amount referred to in subsection (a)(1)(B) for a State is the product of—

“(A) an amount equal to the amount appropriated pursuant to section 2414(a) for the fiscal year involved; and

“(B) the ratio of the distribution factor for the State to the sum of the distribution factors for all the States.

“(2) In paragraph (1)(B), the term ‘distribution factor’ means, for a State, the product of—

“(A) the number in the State of additional cases of acquired immune deficiency syndrome, as indicated by the number of such cases reported to and confirmed by the Secretary for the most recent fiscal year for which such data are available, and

“(B) the ratio (based on the most recent available data) of (i) the average per capita income of individuals in the United States to (ii) the average per capita income of individuals in the State;

District of
Columbia.
Puerto Rico.

except that the distribution factors for all the States and territories shall be proportionally reduced to the extent necessary to assure that the total of the allotments under subsection (a) for all the States and territories for each fiscal year does not exceed the amount appropriated pursuant to section 2414(a) for the fiscal year.

“(c) INDIAN TRIBES.—

“(1) Upon the request of the governing body of an Indian tribe or tribal organization within a State to the Secretary, the Secretary shall—

“(A) reserve from the amount that otherwise would be allotted for the fiscal year to the State under subsection (a) an amount determined in accordance with paragraph (2); and

“(B) grant the amount reserved under subparagraph (A) to the Indian tribe or tribal organization serving eligible individuals who are members of the Indian tribe or tribal organization.

“(2) The amount reserved under paragraph (1)(A) shall be an amount equal to the product of—

“(A) the amount that otherwise would be allotted to the State under subsection (a) for the fiscal year; and

“(B) the Secretary's estimate of the proportion of the number of additional cases described in subsection (b)(2)(A) that are attributable to members of the Indian tribe or tribal organization.

“(3) The Secretary may not make a grant under paragraph (1)(B) to an Indian tribe or tribal organization unless the Indian tribe or tribal organization submits to the Secretary an application meeting the requirements of such an application under section 2407.

“(d) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

“(1) Amounts described in paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary to States receiving payments under section 2401(a) for the fiscal year (other than any State referred to in paragraph (2)(B)).

“(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States or territories under section 2401(a) as a result of—

“(A) the failure of any State or territory to submit an application under section 2407 within a reasonable time period established by the Secretary; or

“(B) any State or territory informing the Secretary that the State or territory does not intend to expend the full amount of the allotment made to the State or territory.

“(3) The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

“(A) an amount equal to the amount described in paragraph (2) for the fiscal year involved; and

“(B) the ratio determined under subsection (b)(1)(B) for the State.

“SEC. 2409. FAILURE TO COMPLY WITH AGREEMENTS.

42 USC 300dd-8.

“(a) REPAYMENT OF PAYMENTS.—

“(1) The Secretary may, subject to subsection (c), require a State to repay any payments received by the State under section 2401(a) that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2407.

“(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 2401(a).

“(b) WITHHOLDING.—

“(1) The Secretary may, subject to subsection (c), withhold payments due under section 2401(a) if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2407.

“(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 2401(a) in accordance with the agreements referred to in such paragraph.

“(c) OPPORTUNITY FOR HEARING.—Before requiring repayment of payments under subsection (a)(1), or withholding payments under subsection (b)(1), the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

“(d) TECHNICAL VIOLATIONS.—The Secretary may not require repayment under subsection (a)(1), or withhold payments under subsection (b)(1), for a technical violation, as determined by the Secretary, of any agreement required to be contained in the application submitted by the State pursuant to section 2407.

“(e) INVESTIGATIONS.—

“(1) The Secretary shall conduct in the several States in each fiscal year investigations of the expenditure of payments received by the States under section 2401(a) in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 2407.

“(2) Each State, and each entity receiving funds from payments made to a State under section 2401(a), shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

“(3)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 2401(a), or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

“(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

"SEC. 2410. PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

42 USC 300dd-9.

"(a) **IN GENERAL.**—A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 2401(a).

"(b) **CRIMINAL PENALTY FOR VIOLATION OF PROHIBITION.**—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

"SEC. 2411. TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.42 USC
300dd-10.

"(a) **TECHNICAL ASSISTANCE.**—Upon the request of a State receiving payments under section 2401(a), the Secretary may, without charge to the State, provide to the State (or to any public or private entity designated by the State) technical assistance with respect to the planning, development, and operation of this part. The Secretary may provide such technical assistance directly, through contract, or through grants.

"(b) PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

"(1) Upon the request of a State receiving payments under section 2401(a), the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out this part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

"(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under section 2401(a) to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

"SEC. 2412. REPORT BY SECRETARY.42 USC
300dd-11.

"Not later than March 1, 1990, the Secretary shall report to the Congress on the activities of the States under this part. Such report shall include a recommendation as to whether or not the program under this part should be extended beyond fiscal year 1990 and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives.

"SEC. 2413. DEFINITIONS.42 USC
300dd-11.

"For purposes of this part:

"(1) The terms 'Indian tribe' and 'tribal organization' have the same meaning given such terms in sections 4(b) and 4(c) of the Indian Self-Determination and Education Assistance Act.

"(2) The term 'infected with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from infection with such etiologic agent.

"(3)(A) An individual is considered to have low income if the individual's income does not exceed 200 percent of the official poverty line.

"(B) The term 'official poverty line' refers, with respect to an individual, to the official poverty line defined by the Office of

Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981, applicable to a family of the size involved.

“(4)(A) The term ‘State’ means, except as provided in subparagraph (B), each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

“(B) For purposes of section 2408(d), the term ‘State’ means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(5) The term ‘territory of the United States’ means each of the following: the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

42 USC
300dd-13.

“SEC. 2414. FUNDING.

“(a) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants under section 2401, there are authorized to be appropriated \$100,000,000 for each of the fiscal years 1989 and 1990.

“(b) AVAILABILITY TO STATES.—Any amounts paid to a State or territory under section 2401(a) shall remain available to the State or territory until the expiration of the 1-year period beginning on the date on which the State or territory receives such amounts.

42 USC
300dd-14.

“SEC. 2415. SUNSET.

“Effective with respect to appropriations made for any period after fiscal year 1990, part A of title XXIV of the Public Health Service Act is repealed.

“PART B—SUBACUTE CARE

42 USC
300dd-21.

“SEC. 2421. DEMONSTRATION PROJECTS.

“(a) As used in this section:

“(1) The term ‘patients infected with the human immunodeficiency virus’ means persons who have a disease, or are recovering from a disease, attributable to the infection of such person with the human immunodeficiency virus, and as a result of the effects of such disease, are in need of subacute-care services.

“(2) The term ‘subacute care’ means medical and health care services that are required for persons recovering from acute care episodes that are less intensive than the level of care provided in acute-care hospitals, and includes skilled nursing care, hospice care, and other types of health services provided in other long-term-care facilities.

“(b) The Secretary shall conduct three demonstration projects to determine the effectiveness and cost of providing the subacute-care services described in subsection (b) to patients infected with the human immunodeficiency virus, and the impact of such services on the health status of such patients.

“(c)(1) The services provided under each demonstration project shall be designed to meet the specific needs of patients infected with the human immunodeficiency virus, and shall include—

“(A) the care and treatment of such patients by providing—

“(i) subacute care;

“(ii) emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate,

either directly or through affiliation with a hospital that has experience in treating AIDS patients; and

“(iii) case management services to ensure, through existing services and programs whenever possible, appropriate discharge planning for patients; and

“(B) technical assistance, to other facilities in the region served by such facility, that is directed toward education and training of physicians, nurses, and other health-care professionals in the subacute care and treatment of patients infected with the human immunodeficiency virus.

“(2) Services provided under each demonstration project may also include—

“(A) hospice services;

“(B) outpatient care; and

“(C) outreach activities in the surrounding community to hospitals and other health-care facilities that serve patients infected with the human immunodeficiency virus.

“(d) The demonstration projects shall be conducted—

“(1) during a 4-year period beginning not later than 9 months after the date of enactment of this section; and

“(2) at sites that—

“(A) are geographically diverse and located in areas that are appropriate for the provision of the required and authorized services; and

“(B) have the highest incidence of AIDS cases and the greatest need for subacute-care services.

“(e) The Secretary shall evaluate the operations of the demonstration projects and shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

Reports.

“(1) not later than 18 months after the beginning of the first project, a preliminary report that contains—

“(A) a description of the sites at which the projects are being conducted and of the services being provided in each project; and

“(B) a preliminary evaluation of the experience of the projects in the first 12 months of operation; and

“(2) not later than 6 months after the completion of the last project, a final report that contains—

“(A) an assessment of the costs of subacute care for patients infected with the human immunodeficiency virus, including a breakdown of all other sources of funding for the care provided to cover subacute care; and

“(B) recommendations for appropriate legislative changes.

“(f) Each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—

Research and development.

“(1) clinical research on the acquired immunodeficiency syndrome, concentrating on research on the neurological manifestations resulting from infection with the human immunodeficiency virus; and

“(2) the study of the psychological and mental health issues related to the acquired immunodeficiency syndrome.

“(g)(1) To carry out this section, there are authorized to be appropriated \$10,000,000 for fiscal year 1988 and such sums as are necessary for each of the fiscal years 1989 through 1991.

Appropriation authorization.

Contracts.
Veterans.

"(2) Amounts appropriated pursuant to paragraph (1) shall remain available until September 10, 1992.

"(h) The Secretary shall enter into an agreement with the Administrator of the Veterans' Administration to ensure that appropriate provision will be made for the furnishing, through demonstration projects, of services to eligible veterans, under contract with the Veterans' Administration pursuant to section 620 of title 38, United States Code.

"PART C—OTHER HEALTH SERVICES

"Subpart I—Counseling and Testing

42 USC
300dd-31.

"SEC. 2431. GRANTS FOR ANONYMOUS TESTING.

"The Secretary may make grants to the States for the purpose of providing opportunities for individuals—

"(1) to undergo counseling and testing with respect to the etiologic agent for acquired immune deficiency syndrome without being required to provide any information relating to the identity of the individuals; and

"(2) to undergo such counseling and testing through the use of a pseudonym.

42 USC
300dd-32.

"SEC. 2432. REQUIREMENT OF PROVISION OF CERTAIN COUNSELING SERVICES.

"(a) COUNSELING BEFORE TESTING.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, before testing an individual pursuant to such section, the State will provide to the individual appropriate counseling with respect to acquired immune deficiency syndrome (based on the most recent scientific data relating to such syndrome), including—

"(1) measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome;

"(2) the accuracy and reliability of the results of such testing;

"(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome; and

"(4) encouraging individuals, as appropriate, to undergo testing for such etiologic agent and providing information on the benefits of such testing.

"(b) COUNSELING OF INDIVIDUALS WITH NEGATIVE TEST RESULTS.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is not infected with the etiologic agent for acquired immune deficiency syndrome, the State will review for the individual the information provided pursuant to subsection (a) with respect to such syndrome, including—

"(1) the information described in paragraphs (1) through (3) of such subsection; and

"(2) the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome.

"(c) COUNSELING OF INDIVIDUALS WITH POSITIVE TEST RESULTS.—The Secretary may not make a grant under section 2431 to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that the individual is infected with

the etiologic agent for acquired immune deficiency syndrome, the State will provide to the individual appropriate counseling with respect to such syndrome, including—

“(1) reviewing the information described in paragraphs (1) through (3) of subsection (a);

“(2) reviewing the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome;

“(3) the importance of not exposing others to the etiologic agent for acquired immune deficiency syndrome;

“(4) the availability in the geographic area of any appropriate services with respect to health care, including mental health care and social and support services;

“(5) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to the etiologic agent for acquired immune deficiency syndrome and any individual whom the infected individual may have exposed to such etiologic agent; and

“(6) the availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph (4).

“(d) **RULE OF CONSTRUCTION WITH RESPECT TO COUNSELING WITHOUT TESTING.**—Agreements entered into pursuant to subsections (a) through (c) may not be construed to prohibit any grantee under section 2431 from expending the grant for the purpose of providing counseling services described in such subsections to an individual who will not undergo testing described in such section as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

“(e) **USE OF FUNDS.**—

“(1) The purpose of this part is to provide for counseling and testing services to prevent and reduce exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome.

“(2) All individuals receiving counseling pursuant to this part are to be counseled about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

“(3) None of the fund appropriated to carry out this part may be used to provide counseling that is designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous drug abuse.

“(4) Paragraph (3) may not be construed to prohibit a counselor who has already performed the counseling of an individual required by paragraph (2), to provide accurate information about means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

“**SEC. 2433. FUNDING.**

“For the purpose of grants under section 2431, there are authorized to be appropriated \$100,000,000 for each of the fiscal years 1989 and 1990.

42 USC
300dd-33.

"Subpart II—Counseling and Mental Health Services

42 USC
300dd-41.

Grants.

"SEC. 2441. DEMONSTRATION PROJECTS FOR INDIVIDUALS WITH POSITIVE TEST RESULTS.

"(a) IN GENERAL.—The Secretary may make grants to public and nonprofit private entities for demonstration projects for the development, establishment, or expansion of programs to provide counseling and mental health treatment—

"(1) for individuals who experience serious psychological reactions as a result of being informed that the results of testing for the etiologic agent for acquired immune deficiency syndrome indicate that the individuals are infected with such etiologic agent; and

"(2) for the families of such individuals, and for others, who experience serious psychological reactions as a result of being informed of the results of such testing of such individuals.

"(b) PREFERENCES IN MAKING GRANTS.—In making grants under subsection (a), the Secretary shall give preference to applicants that are based at, or have relationships with, entities providing comprehensive health services to individuals who are infected with the etiologic agent for acquired immune deficiency syndrome.

"(c) REQUIREMENT OF PROVISION OF INFORMATION ON PREVENTION.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that counseling provided pursuant to such subsection will include counseling relating to measures for the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(d) AUTHORITY FOR TRAINING.—A grantee under subsection (a) may expend the grant to train individuals to provide the services described in such subsection.

"(e) REQUIREMENT OF IDENTIFICATION OF NEEDS AND OBJECTIVES.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant submits to the Secretary—

"(1) information demonstrating that the applicant has, with respect to mental health treatment related to the etiologic agent for acquired immune deficiency syndrome, identified the need for such treatment in the area in which the program will be developed, established, or expanded; and

"(2) a description of—

"(A) the objectives established by the applicant for the conduct of the program; and

"(B) the method the applicant will use to evaluate the activities conducted under the program and to determine the extent to which such objectives have been met.

"(f) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under subsection (a) unless—

"(1) an application for the grant is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary;

"(3) the application contains the information required to be submitted under subsection (e); and

"(4) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

“(g) **REQUIREMENT OF MINIMUM NUMBER OF GRANTS FOR FISCAL YEAR 1989.**—Subject to the extent of amounts made available in appropriations Acts, the Secretary shall, for fiscal year 1989, make not less than 6 grants under subsection (a).

“(h) **TECHNICAL ASSISTANCE AND ADMINISTRATIVE SUPPORT.**—The Secretary, acting through the Director of the National Institute of Mental Health, may provide technical assistance and administrative support to grantees under subsection (a).

“(i) **DEFINITION.**—For purposes of this section, the term ‘mental health treatment’ means individual, family or group services designed to alleviate distress, improve functional ability, or assist in changing dysfunctional behavior patterns.

“(j) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.”

Subtitle C—Prevention

SEC. 221. FORMULA GRANTS TO STATES.

The Public Health Service Act (42 U.S.C. 201 et seq.), as amended by section 211, is further amended by inserting after title XXIV the following new title:

“TITLE XV—PREVENTION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME

SEC. 2500. USE OF FUNDS.

42 USC 300ee.

“(a) **IN GENERAL.**—The purpose of this part is to provide for the establishment of education and information programs to prevent and reduce exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

“(b) **CONTENTS OF PROGRAMS.**—All programs of education and information receiving funds under this title shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

“(c) **LIMITATION.**—None of the funds appropriated to carry out this title may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

“(d) **CONSTRUCTION.**—Subsection (c) may not be construed to restrict the ability of an education program that includes the information required in subsection (b) to provide accurate information about various means to reduce an individual’s risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

“PART A—FORMULA GRANTS TO STATES

SEC. 2501. ESTABLISHMENT OF PROGRAM.

42 USC
300ee-11.

“(a) **ALLOTMENTS FOR STATES.**—For the purpose described in subsection (b), the Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 2507. The Secretary shall

make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 2503.

Public
information.

“(b) **PURPOSE OF GRANTS.**—The Secretary may not make payments under subsection (a) for a fiscal year unless the State involved agrees to expend the payments only for the purpose of carrying out, in accordance with section 2502, public information activities with respect to acquired immune deficiency syndrome.

42 USC
300ee-12.

“**SEC. 2502. PROVISIONS WITH RESPECT TO CARRYING OUT PURPOSE OF GRANTS.**

Public
information.

“A State may expend payments received under section 2501(a)—

“(1) to develop, establish, and conduct public information activities relating to the prevention and diagnosis of acquired immune deficiency syndrome for those populations or communities in the State in which there are a significant number of individuals at risk of infection with the etiologic agent for such syndrome;

Public
information.

“(2) to develop, establish, and conduct such public information activities for the general public relating to the prevention and diagnosis of such syndrome;

Research and
development.

“(3) to develop, establish, and conduct activities to reduce risks relating to such syndrome, including research into the prevention of such syndrome;

“(4) to conduct demonstration projects for the prevention of such syndrome;

“(5) to provide technical assistance to public entities, to non-profit private entities concerned with such syndrome, to schools, and to employers, for the purpose of developing information programs relating to such syndrome;

Health care
professionals.
Education.

“(6) with respect to education and training programs for the prevention of such syndrome, to conduct such programs for health professionals (including allied health professionals), public safety workers (including emergency response employees), teachers, school administrators, and other appropriate education personnel;

“(7) to conduct appropriate programs for educating school-aged children with respect to such syndrome, after consulting with local school boards;

“(8) to make available to physicians and dentists in the State information with respect to acquired immune deficiency syndrome, including measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome (which information is updated not less than annually with the most recently available scientific data relating to such syndrome);

“(9) to carry out the initial implementation of recommendations contained in the guidelines and the model curriculum developed under section 2525; and

Grants.
Education.

“(10) to make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of the development, establishment, and expansion of programs for education directed toward individuals at increased risk of infection with the etiologic agent for such syndrome and activities to reduce the risks of exposure to such etiologic agent, with preference to programs directed

toward populations in which there is significant evidence of such infection.

C. 2503. REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS AND ASSURANCES.

42 USC
300ee-13.

(a) **IN GENERAL.**—The Secretary may not make payments under section 2501(a) for a fiscal year unless—

“(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the payments for the fiscal year;

“(2) the description identifies the populations, areas, and localities in the State with a need for the services for which amounts may be provided by the State under this part;

“(3) the description provides information relating to the programs and activities to be supported and services to be provided, including a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities; and

“(4) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

“(5) the agreements are made through certification from the chief executive officer of the State;

“(6) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

“(7) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) **OPPORTUNITY FOR PUBLIC COMMENT.**—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that, in developing and carrying out the description required in subsection (a), the State will provide public notice with respect to the description (including any revisions) and will facilitate comments from interested persons.

C. 2504. RESTRICTIONS ON USE OF GRANT.

42 USC
300ee-14.

(a) **IN GENERAL.**—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that payments will not be expended—

“(1) to provide inpatient services;

“(2) to make cash payments to intended recipients of services;

“(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

“(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

Real property.

(b) **LIMITATION ON ADMINISTRATIVE EXPENSES.**—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments for administrative expenses with respect to carrying out the purpose described in section 2501(b).

C. 2505. REQUIREMENT OF REPORTS AND AUDITS BY STATES.

42 USC
300ee-15.

(a) **REPORTS.**—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form

and containing such information as the Secretary determines to be necessary for—

Records.

“(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments;

“(2) determining whether the payments were expended in accordance with the needs within the State required to be identified pursuant to section 2503(a)(2);

“(3) determining whether the payments were expended in accordance with the purpose described in section 2501(b); and

“(4) determining the percentage of payments received pursuant to such section that were expended by the State for administrative expenses during the preceding fiscal year.

“(b) AUDITS.—

“(1) The Secretary may not payments under section 2501(a) for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section.

“(2) The Secretary may not payments under section 2501(a) for a fiscal year unless the State involved agrees that—

“(A) the State will provide for—

“(i) a financial and compliance audit of such payments; or

“(ii) a single financial and compliance audit of each entity administering such payments;

“(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

“(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

“(3) The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

“(4) For purposes of paragraph (2), the term ‘financial and compliance audit’ means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

Reports.

“(c) AVAILABILITY TO PUBLIC.—The Secretary may not make payments under section 2501(a) for a fiscal year unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

“(d) EVALUATIONS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of payments received under section 2501(a) in order to ensure that expenditures are consistent with the provisions of this part.

"SEC. 2506. ADDITIONAL REQUIRED AGREEMENTS.42 USC
300ee-16.

"The Secretary may not, except as provided in subsection (b), make payments under section 2501(a) for a fiscal year unless the State involved agrees that—

"(1) all programs conducted or supported by the State with such payments will establish objectives for the program and will determine the extent to which the objectives are met;

"(2) information provided under this part will be scientifically accurate and factually correct;

"(3) in carrying out section 2501(b), the State will give priority to programs described in section 2502(10) for individuals described in such section;

"(4) with respect to a State in which there is a substantial number of individuals who are intravenous substance abusers, the State will place priority on activities under this part directed at such substance abusers;

"(5) with respect to a State in which there is a significant incidence of reported cases of acquired immune deficiency syndrome, the State will—

"(A) for the purpose described in subsection (b) of section 2501, expend not less than 50 percent of payments received under subsection (a) of such section for a fiscal year—

"(i) to make grants to public entities, to migrant health centers (as defined in section 329(a)), to community health centers (as defined in section 330(a)), and to nonprofit private entities concerned with acquired immune deficiency syndrome; or

Grants.

"(ii) to enter into contracts with public and private entities; and

Contracts.

"(B) of the amounts reserved for a fiscal year by the State for expenditures required in subparagraph (A), expend not less than 50 percent to carry out section 2502(10) through grants to nonprofit private entities, including minority entities, concerned with acquired immune deficiency syndrome located in and representative of communities and subpopulations reflecting the local incidence of such syndrome;

(For purposes of this section, the term 'significant percentage' means at least a percentage of 1 percent of the number of reported cases of such syndrome in the United States);

"(6) with respect to programs carried out pursuant to section 2502(10), the State will ensure that any applicant for a grant under such section agrees—

"(A) that any educational or informational materials developed with a grant pursuant to such section will contain material, and be presented in a manner, that is specifically directed toward the group for which such materials are intended;

Education.

"(B) to provide a description of the manner in which the applicant has planned the program in consultation with, and of the manner in which such applicant will consult during the conduct of the program with—

"(i) appropriate local officials and community groups for the area to be served by the program;

“(ii) organizations comprised of, and representing the specific population to which the education or prevention effort is to be directed; and

“(iii) individuals having expertise in health education and in the needs of the population to be served;

“(C) to provide information demonstrating that the applicant has continuing relationships, or will establish continuing relationships, with a portion of the population in the service area that is at risk of infection with the etiologic agent for acquired immune deficiency syndrome and with public and private entities in such area that provide health or other support services to individuals with such infection;

“(D) to provide a description of—

“(i) the objectives established by the applicant for the conduct of the program; and

“(ii) the methods the applicant will use to evaluate the activities conducted under the program to determine if such objectives are met; and

“(E) such other information as the Secretary may prescribe;

“(7) with respect to programs carried out pursuant to section 2502(10), the State will give preference to any applicant for grant pursuant to such section that is located in, has a history of service in, and will serve under the program, any geographical area in which—

“(A) there is a significant incidence of acquired immune deficiency syndrome;

“(B) there has been a significant increase in the incidence of such syndrome; or

“(C) there is a significant risk of becoming infected with the etiologic agent for such syndrome;

“(8) the State will establish reasonable criteria to evaluate the effective performance of entities that receive funds from payments made to the State under section 2501(a) and will establish procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity; and

“(9) the State will permit and cooperate with Federal investigations undertaken in accordance with section 2509(e);

“(10) the State will maintain State expenditures for services provided pursuant to section 2501 at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments.

42 USC
300ee-17.

“SEC. 2507. DETERMINATION OF AMOUNT OF ALLOTMENTS FOR STATE

“(a) MINIMUM ALLOTMENT.—The allotment for a State under section 2501(a) for a fiscal year shall be the greater of—

“(1) the amount described in subsection (b); or

“(2) the amount determined in accordance with subsection (b).

“(b) DETERMINATION OF MINIMUM ALLOTMENT.—

“(1) If the total amount appropriated under section 2516(a) for a fiscal year exceeds \$100,000,000, the amount referred to in subsection (a)(1) is \$300,000 for the fiscal year.

“(2) If the total amount appropriated under section 2514(a) for a fiscal year equals or exceeds \$50,000,000, but is less than

\$100,000,000, the amount referred to in subsection (a)(1) is \$200,000 for the fiscal year.

“(3) If the total amount appropriated under section 2514(a) for a fiscal year is less than \$50,000,000, the amount referred to in subsection (a)(1) is \$100,000 for the fiscal year.

“(c) DETERMINATION UNDER FORMULA.—

“(1) The amount referred to in subsection (a)(2) is the sum of—

“(A) the amount determined under paragraph (2); and

“(B) the amount determined under paragraph (3).

“(2) The amount referred to in paragraph (1)(A) is the product of—

“(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 2514(a); and

“(B) a percentage equal to the quotient of—

“(i) the population of the State involved; divided by

“(ii) the population of the United States.

“(3) The amount referred to in paragraph (1)(B) is the product of—

“(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 2514(a); and

“(B) a percentage equal to the quotient of—

“(i) the number of additional cases of acquired immune deficiency syndrome reported to and confirmed by the Secretary for the State involved for the most recent fiscal year for which such data is available; divided by

“(ii) the number of additional cases of such syndrome reported to and confirmed by the Secretary for the United States for such fiscal year.

“(d) DISPOSITION OF CERTAIN FUNDS APPROPRIATED FOR ALLOTMENTS.—

“(1) Amounts described in paragraph (2) shall be allotted by the Secretary to States receiving payments under section 2501(a) for the fiscal year (other than any State referred to in paragraph (2)(C)). Such amounts shall be allotted according to a formula established by the Secretary. The formula shall be equivalent to the formula described in this section under which the allotment for the State for the fiscal year involved was determined.

“(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States under section 2501(a) as a result of—

“(A) the failure of any State to submit an application under section 2507;

“(B) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

“(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

“SEC. 2508. FAILURE TO COMPLY WITH AGREEMENTS.

“(a) REPAYMENT OF PAYMENTS.—

“(1) The Secretary may, subject to subsection (c), require a State to repay any payments received by the State under section 2501(a) that the Secretary determines were not expended by the State in accordance with the agreements required to be con-

tained in the application submitted by the State pursuant to section 2507.

"(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 2501(a).

"(b) WITHHOLDING.—

"(1) The Secretary may, subject to subsection (c), withhold payments due under section 2501(a) if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2507.

"(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 2501(a) in accordance with the agreements referred to in such paragraph.

"(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

"(c) OPPORTUNITY FOR HEARING.—Before requiring repayment of payments under subsection (a)(1), or withholding payments under subsection (b)(1), the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

"(d) PROMPT RESPONSE TO SERIOUS ALLEGATIONS.—The Secretary shall promptly respond to any complaint of a substantial or serious nature that a State has failed to expend amounts received under section 2501(a) in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 2507.

"(e) INVESTIGATIONS.—

"(1) The Secretary shall conduct in several States in each fiscal year investigations of the expenditure of payments received by the States under section 2501(a) in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 2507.

"(2) The Comptroller General of the United States may conduct investigations of the expenditure of funds received under section 2501(a) by a State in order to ensure compliance with the agreements referred to in paragraph (1).

"(3) Each State, and each entity receiving funds from payments made to a State under section 2501(a), shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

"(4)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States shall not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 2501(a), or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

“(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

“SEC. 2509. PROHIBITION AGAINST CERTAIN FALSE STATEMENTS.

42 USC
300ee-19.

“(a) IN GENERAL.—

“(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 2501(a).

“(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 2501(a) may not conceal or fail to disclose any such event with the intent of fraudulently securing such amounts.

“(b) CRIMINAL PENALTY FOR VIOLATION OF PROHIBITION.—Any person who violates a prohibition established in subsection (a) may for each violation be fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both.

“SEC. 2510. TECHNICAL ASSISTANCE AND PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.

42 USC
300ee-20.

“(a) TECHNICAL ASSISTANCE.—The Secretary may provide training and technical assistance to States with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

Contracts.

“(b) PROVISION BY SECRETARY OF SUPPLIES AND SERVICES IN LIEU OF GRANT FUNDS.—

“(1) Upon the request of a State receiving payments under this part, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

“(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the program involved to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

“SEC. 2511. EVALUATIONS.

42 USC
300ee-21.
Grants.
Contracts.

“The Secretary shall, directly or through grants or contracts, evaluate the services provided and activities carried out with payments to States under this part.

“SEC. 2512. REPORT BY SECRETARY.

42 USC
300ee-22.

“The Secretary shall annually prepare a report on the activities of the States carried out pursuant to this part. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives. The report shall be submitted to the Congress through inclusion in the comprehensive report required in section 2301.

42 USC
300ee-23.

"SEC. 2513. DEFINITION.

"For purposes of this part, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from such etiologic agent.

42 USC
300ee-24.

"SEC. 2514. FUNDING.

"(a) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of making allotments under section 2501(a), there are authorized to be appropriated \$165,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) **AVAILABILITY TO STATES.**—Any amounts paid to a State under section 2501(a) shall remain available to the State until the expiration of the 1-year period beginning on the date on which the State receives such amounts.

"PART B—NATIONAL INFORMATION PROGRAMS

42 USC
300ee-31.

"SEC. 2521. AVAILABILITY OF INFORMATION TO GENERAL PUBLIC.

"(a) **COMPREHENSIVE INFORMATION PLAN.**—The Secretary, acting through the Director of the Centers for Disease Control, shall annually prepare a comprehensive plan, including a budget, for a National Acquired Immune Deficiency Syndrome Information Program. The plan shall contain provisions to implement the provisions of this title. The Director shall submit such plan to the Secretary. The authority established in this subsection may not be construed to be the exclusive authority for the Director to carry out information activities with respect to acquired immune deficiency syndrome.

"(b) CLEARINGHOUSE.—

"(1) The Secretary, acting through the Director of the Centers for Disease Control, may establish a clearinghouse to make information concerning acquired immune deficiency syndrome available to Federal agencies, States, public and private entities, and the general public.

"(2) The clearinghouse may conduct or support programs—

"(A) to develop and obtain educational materials, model curricula, and methods directed toward reducing the transmission of the etiologic agent for acquired immune deficiency syndrome;

"(B) to provide instruction and support for individuals who provide instruction in methods and techniques of education relating to the prevention of acquired immune deficiency syndrome and instruction in the use of the materials and curricula described in subparagraph (A); and

"(C) to conduct, or to provide for the conduct of, the materials, curricula, and methods described in paragraph (1) and the efficacy of such materials, curricula, and methods in preventing infection with the etiologic agent for acquired immune deficiency syndrome.

"(c) **TOLL-FREE TELEPHONE COMMUNICATIONS.**—The Secretary shall provide for the establishment and maintenance of toll-free telephone communications to provide information to, and respond to queries from, the public concerning acquired immune deficiency syndrome. Such communications shall be available on a 24-hour basis.

"SEC. 2522. PUBLIC INFORMATION CAMPAIGNS.42 USC
300ee-32.
Grants.
Contracts.

"(a) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, and shall enter into contracts with public and private entities, for the development and delivery of public service announcements and paid advertising messages that warn individuals about activities which place them at risk of infection with the etiologic agent for such syndrome.

"(b) **REQUIREMENT OF APPLICATION.**—The Secretary may not provide financial assistance under subsection (a) unless—

"(1) an application for such assistance is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"SEC. 2523. PROVISION OF INFORMATION TO UNDERSERVED POPULATIONS.42 USC
300ee-33.

Grants.

"(a) **IN GENERAL.**—The Secretary may make grants to public entities, to migrant health centers (as defined in section 329(a)), to community health centers (as defined in section 330(a)), and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of assisting grantees in providing services to populations of individuals that are underserved with respect to programs providing information on the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

"(b) **PREFERENCES IN MAKING GRANTS.**—In making grants under subsection (a), the Secretary shall give preference to any applicant for such a grant that has the ability to disseminate rapidly the information described in subsection (a) (including any national organization with such ability).

"SEC. 2524. AUTHORIZATION OF APPROPRIATIONS.42 USC
300ee-34.

"(a) **IN GENERAL.**—For the purpose of carrying out sections 2521 through 2523, there are authorized to be appropriated \$105,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

"(b) **ALLOCATIONS.**—

"(1) Of the amounts appropriated pursuant to subsection (a), the Secretary shall make available \$45,000,000 to carry out section 2522 and \$30,000,000 to carry out this part through financial assistance to minority entities for the provision of services to minority populations.

"(2) After consultation with the Director of the Office of Minority Health and with the Indian Health Service, the Secretary, acting through the Director of the Centers for Disease Control, shall, not later than 90 days after the date of the enactment of this section, publish guidelines to provide procedures for applications for funding pursuant to paragraph (1) and for public comment."

Subtitle D—National Commission on Acquired Immune Deficiency Syndrome

SEC. 241. SHORT TITLE.

This subtitle may be cited as the “National Commission on Acquired Immune Deficiency Syndrome Act”.

SEC. 242. ESTABLISHMENT.

There is established a commission to be known as the “National Commission on Acquired Immune Deficiency Syndrome” (hereinafter in this Act referred to as the “Commission”).

SEC. 243. DUTIES OF COMMISSION.

(a) **GENERAL PURPOSE OF THE COMMISSION.**—The Commission shall carry out activities for the purpose of promoting the development of a national consensus on policy concerning acquired immune deficiency syndrome (hereinafter in this subtitle referred to as “AIDS”) and of studying and making recommendations for a consistent national policy concerning AIDS.

(b) **SUCCESSION.**—The Commission shall succeed the Presidential Commission on the Human Immunodeficiency Virus Epidemic established by Executive Order 12601, dated June 24, 1987.

(c) **FUNCTIONS.**—The Commission shall perform the following functions:

(1) Monitor the implementation of the recommendations of the Presidential Commission on the Human Immunodeficiency Virus Epidemic, modifying those recommendations as the Commission considers appropriate.

(2) Evaluate the adequacy of, and make recommendations regarding, the financing of health care and research relating to AIDS, including the allocation of resources to various Federal agencies and State and local governments and the roles for and activities of private and public financing.

(3) Evaluate the adequacy of, and make recommendations regarding, the dissemination of information that is essential to the prevention of the spread of AIDS, and that recognizes the special needs of minorities and the important role of the family, educational institutions, religion, and community organizations in education and prevention efforts.

(4) Address any necessary behavioral changes needed to combat AIDS, taking into consideration the multiple medical, ethical, and legal concerns involved, and make recommendations regarding testing and counseling concerning AIDS, particularly with respect to maintaining confidentiality.

(5) Evaluate the adequacy of, and make recommendations regarding, Federal and State laws on civil rights relating to AIDS.

(6) Evaluate the adequacy of, and make recommendations regarding the capability of the Federal Government to monitor and implement policy concerning AIDS (and, to the extent feasible to do so, other diseases, known and unknown, in the future), including research and treatment, the availability of clinical trials, education and the financing thereof, and in doing so specifically—

(A) the streamlining of rules, regulations, and administrative procedures relating to the approval by the Food and Drug Administration of new drugs and medical devices, including procedures for the release of experimental drugs; and

(B) the advancement of administrative consideration by the Health Care Financing Administration relating to reimbursement for new drugs and medical devices approved by the Food and Drug Administration.

(7) Evaluate the adequacy of, and make recommendations regarding, international coordination and cooperation concerning data collection, treatment modalities, and research concerning AIDS.

SEC. 244. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members as follows:

(A) Five members shall be appointed by the President—

President of U.S.

(i) three of whom shall be—

(I) the Secretary of Health and Human Services;

(II) the Administrator of Veterans' Affairs; and

(III) the Secretary of Defense;

who shall be nonvoting members, except that, in the case of a tie vote by the Commission, the Secretary of Health and Human Services shall be a voting member; and

(ii) two of whom shall be selected from the general public on the basis of such individuals being specially qualified to serve on the Commission by reason of their education, training, or experience.

(B) Five members shall be appointed by the Speaker of the House of Representatives on the joint recommendation of the Majority and Minority Leaders of the House of Representatives.

(C) Five members shall be appointed by the President pro tempore of the Senate on the joint recommendation of the Majority and Minority Leaders of the Senate.

(2) CONGRESSIONAL COMMITTEE RECOMMENDATIONS.—In making appointments under subparagraphs (B) and (C) of paragraph (1), the Majority and Minority Leaders of the House of Representatives and the Senate shall duly consider the recommendations of the Chairmen and Ranking Minority Members of committees with jurisdiction over laws contained in chapter 17 of title 38, United States Code (relating to veterans' health care), title XIX of the Social Security Act (42 U.S.C. 1901 et seq.) (relating to Medicaid), and the Public Health Service Act (42 U.S.C. 201 et seq.) (relating to the Public Health Service).

(3) REQUIREMENTS OF APPOINTMENTS.—The Majority and Minority Leaders of the Senate and the House of Representatives shall—

(A) select individuals who are specially qualified to serve on the Commission by reason of their education, training, or experience; and

(B) engage in consultations for the purpose of ensuring that the expertise of the 10 members appointed by the Speaker of the House of Representatives and the President

pro tempore of the Senate shall provide as much of a balance as possible and, to the greatest extent possible, cover the fields of medicine, science, law, ethics, health-care economics, and health-care and social services.

(4) **TERM OF MEMBERS.**—Members of the Commission (other than members appointed under paragraph (1)(A)(i)) shall serve for the life of the Commission.

(5) **VACANCY.**—A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(b) **CHAIRMAN.**—Not later than 15 days after the members of the Commission are appointed, such members shall select a Chairman from among the members of the Commission.

(c) **QUORUM.**—Seven members of the Commission shall constitute a quorum, but a lesser number may be authorized by the Commission to conduct hearings.

(d) **MEETINGS.**—The Commission shall hold its first meeting on a date specified by the Chairman, but such date shall not be earlier than September 1, 1988, and not be later than 60 days after the date of the enactment of this Act, or September 30, 1988, whichever is later. After the initial meeting, the Commission shall meet at the call of the Chairman or a majority of its members, but shall meet at least three times each year during the life of the Commission.

(e) **PAY.**—Members of the Commission who are officers or employees or elected officials of a government entity shall receive no additional compensation by reason of their service on the Commission.

(f) **PER DIEM.**—While away from their homes or regular places of business in the performance of duties for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5, United States Code.

(g) **DEADLINE FOR APPOINTMENT.**—Not earlier than July 11, 1988, and not later than 45 days after the date of the enactment of this Act, or August 1, 1988, whichever is later, the members of the Commission shall be appointed.

SEC. 245. REPORTS.

(a) **INTERIM REPORTS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date on which the Commission is fully constituted under section 244(a), the Commission shall prepare and submit to the President and to the appropriate committees of Congress a comprehensive report on the activities of the Commission to that date.

(2) **CONTENTS.**—The report submitted under paragraph (1) shall include such findings, and such recommendations for legislation and administrative action, as the Commission considers appropriate based on its activities to that date.

(3) **OTHER REPORTS.**—The Commission shall transmit such other reports as it considers appropriate.

(b) **FINAL REPORT.**—

(1) **IN GENERAL.**—Not later than 2 years after the date on which the Commission is fully constituted under section 244(a), the Commission shall prepare and submit a final report to the President and to the appropriate committees of Congress.

(2) **CONTENTS.**—The final report submitted under paragraph (1) shall contain a detailed statement of the activities of the Commission and of the findings and conclusions of the Commis-

sion, including such recommendations for legislation and administrative action as the Commission considers appropriate.

SEC. 246. EXECUTIVE DIRECTOR AND STAFF.

(a) EXECUTIVE DIRECTOR.—

(1) APPOINTMENT.—The Commission shall have an Executive Director who shall be appointed by the Chairman, with the approval of the Commission, not later than 30 days after the Chairman is selected.

(2) COMPENSATION.—The Executive Director shall be compensated at a rate not to exceed the maximum rate of basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

(b) STAFF.—With the approval of the Commission, the Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission.

(c) APPLICABILITY OF CIVIL SERVICE LAWS.—The Executive Director and the additional personnel of the Commission appointed under subsection (b) may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Executive Director may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed \$200 per day.

(e) DETAILED PERSONNEL AND SUPPORT SERVICES.—Upon the request of the Commission for the detail of personnel, or for administrative and support services, to assist the Commission in carrying out its duties under this Act, the Secretary of Health and Human Services and the Administrator of Veterans' Affairs, either jointly or separately, may on a reimbursable basis (1) detail to the Commission personnel of the Department of Health and Human Services or the Veterans' Administration, respectively, or (2) provide to the Commission administrative and support services. The Secretary and the Administrator shall consult for the purpose of determining and implementing an appropriate method for jointly or separately detailing such personnel and providing such services.

SEC. 247. POWERS OF COMMISSION.

(a) HEARINGS.—For the purpose of carrying out this Act, the Commission may conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(b) DELEGATION.—Any member or employee of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take under this Act.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any executive department or agency such information as may be necessary to enable the Commission to carry out this Act, except to the extent that the department or agency is expressly prohibited by law from furnishing such information. On the request of the Chairman of the Commission, the head of such department or agency shall furnish nonprohibited information to the Commission.

(d) **MAILS.**—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 248. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1989 \$2,000,000, and such sums as may be necessary in any subsequent fiscal year, to carry out the purposes of this Act. Amounts appropriated pursuant to such authorization shall remain available until expended.

SEC. 249. TERMINATION.

The Commission shall cease to exist 30 days after the date on which its final report is submitted under section 245(b). The President may extend the life of the Commission for a period of not to exceed 2 years.

Subtitle E—General Provisions

42 USC 300ee-1
note.

SEC. 251. REQUIREMENT OF STUDY WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(a) **IN GENERAL.**—The Secretary of Health and Human Services, acting through the Director of the Office of Minority Health, shall conduct a study for the purpose of determining—

(1) the level of knowledge within minority communities concerning acquired immune deficiency syndrome, the risks of the transmission of the etiologic agent for such syndrome, and the means of reducing such risk; and

(2) the effectiveness of Federal, State, and local prevention programs with respect to acquired immune deficiency syndrome in minority communities.

(b) **REPORT.**—The Secretary shall, not later than 12 months after the date of enactment of this Act, complete the study required in subsection (a) and submit to the Congress a report describing the findings made as a result of the study.

42 USC 300ee-1.

SEC. 252. ESTABLISHMENT OF OFFICE WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME.

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall establish an office for the purpose of ensuring that, in carrying out the duties of the Secretary with respect to prevention of acquired immune deficiency syndrome, the Secretary develops and implements prevention programs targeted at minority populations and provides appropriate technical assistance in the implementation of such programs.

42 USC 300ee-2.

SEC. 253. INFORMATION FOR HEALTH AND PUBLIC SAFETY WORKERS.

(a) **DEVELOPMENT AND DISSEMINATION OF GUIDELINES.**—Not later than 90 days after the date of the enactment of this title, the Secretary of Health and Human Services (hereafter in this section referred to as the “Secretary”), acting through the Director of the Centers for Disease Control, shall develop, issue, and disseminate emergency guidelines to all health workers, public safety workers (including emergency response employees) in the United States concerning—

(1) methods to reduce the risk in the workplace of becoming infected with the etiologic agent for acquired immune deficiency syndrome; and

(2) circumstances under which exposure to such etiologic agent may occur.

(b) **USE IN OCCUPATIONAL STANDARDS.**—The Secretary shall transmit the guidelines issued under subsection (a) to the Secretary of Labor for use by the Secretary of Labor in the development of standards to be issued under the Occupational Safety and Health Act of 1970.

(c) **DEVELOPMENT AND DISSEMINATION OF MODEL CURRICULUM FOR EMERGENCY RESPONSE EMPLOYEES.**—

(1) Not later than 90 days after the date of the enactment of this title, the Secretary, acting through the Director of the Centers for Disease Control, shall develop a model curriculum for emergency response employees with respect to the prevention of exposure to the etiologic agent for acquired immune deficiency syndrome during the process of responding to emergencies.

(2) In carrying out paragraph (1), the Secretary shall consider the guidelines issued by the Secretary under subsection (a).

(3) The model curriculum developed under paragraph (1) shall, to the extent practicable, include—

(A) information with respect to the manner in which the etiologic agent for acquired immune deficiency syndrome is transmitted; and

(B) information that can assist emergency response employees in distinguishing between conditions in which such employees are at risk with respect to such etiologic agent and conditions in which such employees are not at risk with respect to such etiologic agent.

(4) The Secretary shall establish a task force to assist the Secretary in developing the model curriculum required in paragraph (1). The Secretary shall appoint to the task force representatives of the Centers for Disease Control, representatives of State governments, and representatives of emergency response employees.

(5) The Secretary shall—

(A) transmit to State public health officers copies of the guidelines and the model curriculum developed under paragraph (1) with the request that such officers disseminate such copies as appropriate throughout the State; and

(B) make such copies available to the public.

SEC. 254. CONTINUING EDUCATION FOR HEALTH CARE PROVIDERS.

(a) **IN GENERAL.**—The Secretary of Health and Human Services (hereafter in this section referred to as the “Secretary”) may make grants to nonprofit organizations composed of, or representing, health care providers to assist in the payment of the costs of projects to train such providers concerning—

(1) appropriate infection control procedures to reduce the transmission of the etiologic agent for acquired immune deficiency syndrome; and

(2) the provision of care and treatment to individuals with such syndrome or related illnesses.

(b) **LIMITATION.**—The Secretary may make a grant under subsection (a) to an entity only if the entity will provide services under the

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42 USC 300ee-3.

Grants.

Grants.

grant in a geographic area, or to a population of individuals, not served by a program substantially similar to the program described in subsection (a).

(c) REQUIREMENT OF MATCHING FUNDS.—

(1) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available, directly or through donations from public or private entities, non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than \$2 for each \$1 of Federal funds provided in such payments.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under subsection (a) unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

42 USC 300ee-4. **SEC. 255. TECHNICAL ASSISTANCE.**

The Secretary of Health and Human Services shall provide technical assistance to public and nonprofit private entities carrying out programs, projects, and activities relating to acquired immune deficiency syndrome.

SEC. 256. MISCELLANEOUS PROVISIONS.

(a) PUBLIC HEALTH EMERGENCY FUND.—Section 319 of the Public Health Service Act (42 U.S.C. 247d) is amended—

(1) in subsection (a), by inserting “the Administrator of Health Resources and Services,” before “or the Director”; and

(2) in subsection (b)(1), by striking “\$30,000,000” the second place it appears and inserting in lieu thereof “\$45,000,000”.

Drugs and drug
abuse.
42 USC 300ee-5.

(b) CERTAIN USE OF FUNDS.—None of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the United States determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome.

42 USC 275 note.

(c) REPORT ON CERTAIN ETHICAL ISSUES.—The Congressional Bio-medical Ethics Board shall report to Congress within eighteen months from the effective date of this Act on the ethical issues

connected with the administration of nutrition and hydration to dying patients. This report shall include a review of State laws, regulations and court decisions on this topic. The report shall also discuss the arguments concerning the appropriate roles of the patient, the patient's family, the care provider, the State and the appropriate Federal role.

(d) STUDY OF STATE LAWS.—

(1) The Secretary of Health and Human Services shall conduct a study for the purpose of determining—

(A) the laws and policies of the States relating to confidentiality and disclosure of information with respect to records of the counseling and testing of individuals regarding the etiologic agent for acquired immune deficiency syndrome; and

(B) the laws and policies of the States relating to discrimination against individuals infected with such etiologic agent or regarded as being so infected.

(2) Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall complete the study required in subsection (a) and submit to the Congress a report describing the findings made as a result of the study.

Reports.

TITLE III—PREVENTIVE HEALTH, HEALTH SERVICES, AND HEALTH PRO- MOTION

Subtitle A—Preventive Health and Health Services

SEC. 301. BLOCK GRANTS.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Section 1901(a) of the Public Health Service Act (42 U.S.C. 300w(a)) is amended by striking “and” after “1986,” and by inserting before the period the following: “, \$110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991”.

(b) **USE OF ALLOTMENTS.**—Section 1904(a)(1) of the Public Health Service Act (42 U.S.C. 300w-3(a)(1)) is amended—

(1) in subparagraph (B), by inserting before the period the following: “and elevated serum cholesterol”;

(2) in subparagraph (C), by inserting before the period the following: “, including programs designed to reduce the incidence of chronic diseases”;

(3) in subparagraph (D), by inserting before the period the following: “, including immunization services”;

(4) in subparagraph (F), in the second sentence, by striking “systems (other)” and all that follows and inserting the following: “systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems.”; and

(5) by inserting after subparagraph (G) the following new subparagraph:

“(H) Establishing and maintaining preventive health service programs for screening for, the detection, diagnosis, prevention and referral for treatment of, and follow-up on compliance with treatment prescribed for, uterine cancer and breast cancer.”

(c) APPLICATION AND DESCRIPTION OF ACTIVITIES.—Section 1903 of the Public Health Service Act (42 U.S.C. 300w-4(d)) is amended by adding at the end the following new sentence: “The description shall include a statement of the public health objectives expected to be achieved by the State through the use of the payments the State will receive under section 1903.”

(d) REPORTS AND AUDITS.—

(1) Section 1906(a) of the Public Health Service Act (42 U.S.C. 300w-5(a)) is amended by adding at the end the following new paragraph:

“(3) Each annual report required in paragraph (1) shall include:

“(A) information and data on the number of individuals who received services provided through the use of payments under section 1903, the types of such services provided, the types of health care providers that delivered such services, and the cost of each type of such service;

“(B) such other information and data as the Secretary may require; and

“(C) an evaluation of the extent to which such services have been effective toward meeting the public health objectives described in the statement submitted to the Secretary pursuant to section 1905(d).”

(2) Section 1906(b)(6) of the Public Health Service Act (42 U.S.C. 300w-5(b)(6)) is amended by striking “1983,” and inserting “1990.”

SEC. 302. GRANTS FOR EMERGENCY MEDICAL SERVICES FOR CHILDREN.

(a) DURATION OF GRANT.—Section 1910(a) of the Public Health Service Act (42 U.S.C. 300w-9(a)) is amended in the second sentence by striking “shall be for” and all that follows and inserting the following: “shall be for not more than a two-year period, subject to annual evaluation by the Secretary.”

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1910(d) of the Public Health Service Act (42 U.S.C. 300w-9(d)) is amended by inserting before the period the following: “, \$3,000,000 for fiscal year 1989, \$4,000,000 for fiscal year 1990, and \$5,000,000 for fiscal year 1991”.

SEC. 303. REPEAL OF PROGRAM OF STATE PLANNING GRANTS.

Part A of title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by striking section 1910A.

Subtitle B—Programs With Respect to Sexually Transmitted Diseases, Health Information, and Health Promotion

SEC. 311. GRANTS FOR PREVENTION OF SEXUALLY TRANSMITTED DISEASES.

Section 318 of the Public Health Service Act (42 U.S.C. 247c) is amended—

- (1) in the title, by striking “and acquired immune deficiency syndrome”;
- (2) by striking subsections (d) and (f);
- (3) by redesignating subsection (e) as subsection (d) and subsection (g) as subsection (e); and
- (4) in subsection (d)(1) (as so redesignated)—
 - (A) in the first sentence—
 - (i) by striking “(b), (c), and (d)” and inserting “(b) and (c)”;
 - (ii) by striking “and” after “1986,”;
 - (iii) by striking the period and inserting a comma; and
 - (iv) by adding at the end the following: “\$78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991.”;
 - (B) in the third sentence, by striking “(b), (c), or (d)” and inserting “(b) or (c)”;
 - (C) by striking the last sentence.

SEC. 312. HEALTH INFORMATION AND HEALTH PROMOTION.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Title XVII of the Public Health Service Act (42 U.S.C. 300u et seq.) is amended—

(1) in section 1701(b)—

42 USC 300u.

(A) by striking “this title,” and inserting “sections 1701 through 1705,”; and

(B) by striking “and” after “1986,” and inserting before the period the following: “, and \$10,000,000 for each of the fiscal years 1989 through 1991”; and

(2) in section 1706(e), by striking “and” after “1986,” and inserting before the period the following: “, \$6,000,000 for fiscal year 1989, \$8,000,000 for fiscal year 1990, and \$10,000,000 for fiscal year 1991”.

42 USC 300u-5.

(b) **MODEL PROGRAMS FOR EMPLOYEE HEALTH PROMOTION AND DISEASE PREVENTION.**—

(1) Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u(a)) is amended—

(A) by redesignating paragraphs (7) through (10) as paragraphs (8) through (11), respectively; and

(B) by inserting after paragraph (6) the following new paragraph:

“(7)(A) develop model programs through which employers in the public sector, and employers that are small businesses (as defined in section 3 of the Small Business Act), can provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors;

Small business.

“(B) provide technical assistance to public and private employers in implementing such programs (including private employers that are not small businesses and that will implement programs other than the programs developed by the Secretary pursuant to subparagraph (A)); and

“(C) in providing such technical assistance, give preference to small businesses.”

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall complete the development of the model programs required in section 1701(a)(7)(A) of the Public Health Service Act (as added by paragraph (1)(B) of this subsection).

42 USC 300u note.

(c) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u) is amended—

(1) in paragraph (9) (as redesignated by subsection (b)(1)(A) of this section), by striking “paragraph (7)” and inserting “paragraph (8)”; and

(2) in the matter after and below paragraph (11)(D) (as so redesignated)—

(A) by striking the first sentence; and

(B) by striking “paragraph (10)” and inserting “paragraph (11)”.

Organ
Transplant
Amendments
Act of 1988.

TITLE IV—ORGAN TRANSPLANT AMENDMENTS OF 1988

SEC. 401. SHORT TITLE AND REFERENCE.

42 USC 201 note.

(a) **SHORT TITLE.**—This title may be cited as the “Organ Transplant Amendments Act of 1988”.

(b) **REFERENCE.**—Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 402. ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS.

(a) **ADDITIONAL GRANT AUTHORITY.**—Section 371(a) (42 U.S.C. 273(a)) is amended—

(1) in paragraph (2), by inserting “consolidation,” after “operation,”;

(2) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

“(3) The Secretary may make grants for special projects designed to increase the number of organ donors.”; and

(3) in paragraph (4) (as redesignated in paragraph (2) of this subsection)—

(A) by striking “and” at the end of subparagraph (A);

(B) by striking the period at the end and inserting “, and”; and

(C) by adding at the end the following new subparagraph:

“(C) with respect to carrying out paragraph (3), give special consideration to proposals from existing organ procurement organizations.”.

(b) **LIMITATIONS ON ADDITIONAL GRANT AUTHORITY.**—Section 374(b)(3) (42 U.S.C. 274b(b)(3)) is amended in the first sentence by striking “section 371” and all that follows through “organizations” and inserting “paragraphs (2) and (3) of section 371(a)”.

(c) **DESCRIPTION OF ORGAN PROCUREMENT ORGANIZATION.**—

(1) Section 371(b) (42 U.S.C. 273(b)) is amended—

(A) in paragraph (1)(E)—

(i) by striking “size which” and inserting “size such that”; and

(ii) by striking “will include” and all that follows through “year” and inserting the following: “the organization can reasonably expect to procure organs from not less than 50 donors each year”;

(B) in paragraph (2)(C), by striking “372(b)(2)(D),” and inserting the following: “372(b)(2)(E), including arranging

for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,”;

(C) in paragraph (2)(E)—

(i) by inserting “equitably” after “organs”; and

(ii) by striking “centers and”; and

(D) in paragraph (2)—

(i) by striking “and” at the end of subparagraph (I);

(ii) by striking the period at the end and inserting “, and”; and

(iii) by adding at the end the following new subparagraph:

“(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.”.

(2) Section 371(b)(1)(G)(i)(III) is amended by inserting before the comma the following: “or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility”.

(3) The amendment made by paragraph (1)(A) shall not apply to an organ procurement organization designated under section 1138(b) of the Social Security Act until 2 years after the initial designation of the organization under such section.

42 USC 273 note.

(d) AUTHORIZATIONS OF APPROPRIATIONS.—Section 371(c) (42 U.S.C. 273(c)) is amended to read as follows:

“(c) For grants under subsection (a), there is authorized to be appropriated \$5,000,000 for each of the fiscal years 1988 through 1990.”.

SEC. 403. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.

(a) DUTIES.—Section 372(b)(2) (42 U.S.C. 274(b)(2)) is amended—

(1)(A) by redesignating subparagraphs (B) through (H) as subparagraphs (C) through (I), respectively; and

(B) by adding after subparagraph (A) the following new subparagraph:

“(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,”;

(2) in subparagraph (D) (as redesignated in paragraph (1)(A) of this subsection), by striking “organs which” and all that follows and inserting “organs,”;

(3) in subparagraph (E) (as redesignated in paragraph (1)(A) of this subsection), strike “organs,” and insert the following: “organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,”;

(4) in subparagraph (F) (as redesignated in paragraph (1)(A) of this subsection), by striking “basis,” and inserting the following: “basis (and, to the extent practicable, among regions or on a national basis),”; and

(5)(A) by striking “and” at the end of subparagraph (H) (as redesignated in paragraph (1)(A) of this subsection);

(B) by striking the period at the end and inserting “, and”; and

(C) by adding at the end the following new subparagraph:

“(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation.”.

(b) **CONSIDERATION OF CRITICAL COMMENTS.**—Section 372 (42 U.S.C. 274) is amended by adding at the end the following new subsection:

“(c) The Secretary shall establish procedures for—

“(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b); and

“(2) the consideration by the Secretary of such critical comments.”.

SEC. 404. REQUIREMENT OF ESTABLISHMENT OF BONE MARROW REGISTRY.

(a) **IN GENERAL.**—Section 373 (42 U.S.C. 274a) is amended—

(1) by inserting “(a)” after the section designation; and

(2) by adding at the end the following new subsection:

“(b)(1) Not later than October 1, 1988, the Secretary shall, by grant or contract, establish a registry of voluntary bone marrow donors.

“(2) For the purpose of carrying out paragraph (1), there are authorized to be appropriated \$1,500,000 for fiscal year 1989 and \$1,600,000 for fiscal year 1990.”.

(b) **CONFORMING AMENDMENT.**—Section 373 (42 U.S.C. 274a) is amended in the title by inserting “AND BONE MARROW REGISTRY” after “REGISTRY”.

SEC. 405. ADMINISTRATION.

Section 375 (42 U.S.C. 274c) is amended—

(1) in the matter preceding paragraph (1), by striking “1985, 1986, 1987, and 1988,” and inserting “1985 through 1990,”; and

(2) in paragraph (4), by striking “one year” and all that follows through “annual report” and inserting the following: “not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report”.

SEC. 406. REPORT.

Section 376 (42 U.S.C. 274d) is amended by striking “shall annually” and inserting the following: “shall, not later than October 1 of each year,”.

SEC. 407. FETAL ORGAN TRANSPLANTS.

Section 301(c)(1) of the National Organ Transplant Act (42 U.S.C. 274e(c)(1)) is amended to read as follows:

“(1) The term ‘human organ’ means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.”.

SEC. 408. ESTABLISHMENT OF BLOCK GRANT PROGRAM.

(a) **IN GENERAL.**—Title XIX of the Public Health Service Act (42 U.S.C. 300w et seq.) is amended by adding at the end thereof the following new part:

Grants.
Contracts.

Appropriation
authorization.

Reports.

"PART D—IMMUNOSUPPRESSIVE DRUG THERAPY BLOCK GRANT**"SEC. 1931. DEFINITIONS.**

42 USC 300y-21.

"For purposes of this part:

"(1) **ELIGIBLE PATIENT.**—The term 'eligible patient' means an organ transplant patient who is not eligible to receive reimbursement for the cost of immunosuppressive drug therapy under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), under the State's medicaid plan under title XIX of such Act (42 U.S.C. 1396 et seq.), or under private insurance.

"(2) **IMMUNOSUPPRESSIVE DRUG THERAPY.**—The term 'immunosuppressive drug therapy' means drugs and biologicals that are to be used for the purpose of preventing the rejection of transplanted organs and tissues and that can be administered by the transplant patient.

"(3) **TRANSPLANT CENTER.**—The term 'transplant center' means a transplant center that is a member of the Organ Procurement and Transplantation Network established under section 372.

"SEC. 1932. AUTHORIZATION OF APPROPRIATIONS.

42 USC 300y-22.

"For the purpose of making allotments to States to carry out this part, there are authorized to be appropriated \$5,000,000 for each of the fiscal years 1988 through 1990.

"SEC. 1933. ALLOTMENTS.

42 USC 300y-23.

"(a) **AMOUNT.**—

"(1) **IN GENERAL.**—From amounts appropriated under section 1932 for each of the fiscal years 1988 through 1990, the Secretary shall allot to each State an amount that bears the same ratio to the total amount appropriated under such section for such fiscal year as the total number of eligible patients in the State bears to the total number of eligible patients in the United States.

State and local governments.

"(2) **MINIMUM ALLOTMENT.**—Notwithstanding paragraph (1), the allotment of any State in any fiscal year under this subsection shall not be less than \$50,000. If, under paragraph (1), the allotment of any State in any fiscal year will be less than \$50,000, the Secretary shall increase the allotment of such State to \$50,000 and shall proportionately reduce the allotments of all other States whose allotment exceeds \$50,000 in a manner that will insure that the allotment of each State in such fiscal year is at least \$50,000.

"(b) **UNALLOTTED FUNDS.**—

"(1) **IN GENERAL.**—Subject to paragraph (2), to the extent that all the funds appropriated under section 1932 for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(A) one or more States have not submitted an application or description of activities in accordance with section 1936 for such fiscal year;

"(B) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(C) some State allotments are offset or repaid under section 1906(b)(3) (as such section applies to this part pursuant to section 1936(d));

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

"(2) ORGAN TRANSPLANT CENTERS.—

"(A) APPLICATION.—If a State does not submit an application for an allotment or description of activities in accordance with section 1936 for a fiscal year or notifies the Secretary that the State does not intend to use the full amount of the allotment of the State, an organ transplant center in the State may submit an application in accordance with section 1936 for the amount of the allotment not allocated to the State.

"(B) ALLOTMENT.—Subject to subparagraph (C), if an applicant center complies with the requirements imposed on the State by this part, the Secretary shall provide to the center the amount of the allotment not allocated to the State.

"(C) MULTIPLE APPLICANTS.—If two or more applicant centers in a State meet the requirements of subparagraph (B), the Secretary shall divide among the eligible applicant centers in an equitable manner the amount of the allotment not allocated to the State.

"(D) DISTRIBUTION TO OTHER STATES.—If one or more centers in a State receive an allotment under this paragraph for a fiscal year, the allotment shall not be made available to remaining States under paragraph (1).

42 USC 300y-24. **"SEC. 1934. PAYMENTS UNDER ALLOTMENTS TO STATES.**

"(a) IN GENERAL.—For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotments under section 1933 from amounts appropriated for that fiscal year.

"(b) CARRYOVER FUNDS.—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

42 USC 300y-25. **"SEC. 1935. USE OF ALLOTMENTS.**

"(a) IN GENERAL.—

"(1) USE.—Except as provided in subsections (b) and (c), amounts paid to a State under section 1934 from its allotment under section 1933 for any fiscal year shall be used by the State to provide immunosuppressive drug therapy for eligible patients.

"(2) METHODS.—A State may use amounts paid to the State under section 1934 from its allotment under section 1933 to provide immunosuppressive drug therapy for eligible patients—

"(A) by purchasing the drugs and biologicals for such therapy and distributing such drugs and biologicals to transplant centers or eligible patients;

"(B) by certifying that an individual is an eligible patient for purposes of this part and by reimbursing a transplant center for the costs of immunosuppressive drug therapy provided by such center to such individual;

"(C) by any other method prescribed by the Secretary by regulation (other than the method described in subsection (b)(1)).

"(3) **COPAYMENTS.**—A State may require an eligible patient to whom immunosuppressive drug therapy is provided with amounts paid to the State under this part to make copayments for part of the costs of such therapy, without regard to section 1916 of the Social Security Act (42 U.S.C. 1396o).

b) **LIMITATIONS.**—A State may not use amounts paid to it under section 1934 to—

"(1) make direct payments to organ transplant patients; or

"(2) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

c) **ADMINISTRATIVE COSTS.**—Not more than 10 percent of the amount paid to any State under section 1934 from its allotment for section 1933 for any fiscal year may be used for administering funds made available under section 1934. The State will pay from non-Federal sources the remaining costs of administering such activities.

SECTION 1936. APPLICATION AND DESCRIPTION OF ACTIVITIES; REQUIREMENTS.

42 USC 300y-26.

a) **APPLICATION REQUIRED.**—In order to receive an allotment for any fiscal year under section 1933, each State shall submit an application to the Secretary. Each such application shall be in such form as the Secretary shall require. Each application shall contain assurances that the State will meet the requirements of subsection (b).

State and local governments.

b) **REQUIREMENTS.**—As part of the annual application required by subsection (a), the chief executive officer of each State shall—

"(1) certify that the State agrees to use the funds allotted to it under section 1933 in accordance with the requirements of this part;

"(2) agree to cooperate with Federal investigations undertaken in accordance with section 1907 (as such section applies to this part pursuant to subsection (d) of this section); and

"(3) certify that the State agrees that Federal funds made available under section 1934 for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the activities for which funds are provided under such section and will in no event supplant such State, local, and other non-Federal funds.

c) **DESCRIPTION OF ACTIVITIES.**—

"(1) **IN GENERAL.**—The chief executive officer of a State shall, as part of the application required by subsection (a), also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section 1934 for the fiscal year for which the application is submitted, including information on the programs and activities to be supported.

"(2) **PUBLIC COMMENT.**—The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal.

"(3) **REVISIONS.**—The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State under this part. Any revision shall be subject to paragraph (2).

“(d) **ADMINISTRATION.**—Unless inconsistent with this part, section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this part in the same manner as such provisions apply to part A of this title.

“(e) **ADDITIONAL INFORMATION.**—Each annual report submitted by a State to the Secretary under section 1906(a) (as such section applies to this part pursuant to subsection (d) of this section) with respect to its activities under this part shall contain—

“(1) a specification of the number of eligible patients in the State receiving immunosuppressive drug therapy with amounts paid to the State under this part;

“(2) a description of the amount of any copayment required by the State under section 1935(a)(3); and

“(3) a certification that amounts paid to the State under this part are being used in accordance with this part.

42 USC 300y-27. “**SEC. 1937. TERMINATION DATE.**

“The amendments made under part D of this Act shall terminate effective January 1, 1991.”

42 USC 300y-21
note.

(b) **REPORT.**—

(1) **IN GENERAL.**—Not later than 24 months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report concerning the impact of part D of title XIX of the Public Health Service Act (as added by section 407 of this title).

(2) **CONTENTS.**—The report shall contain—

(A) a description of the effect of the program established under such part on organ transplants in the United States;

(B) an analysis of the effects of such program on the costs of organ transplants and renal dialysis;

(C) an analysis of the extent to which amounts paid to States under such part are used for purposes other than the purposes specified by such part, including an analysis of the extent to which drugs and biologicals purchased with such amounts are provided to individuals who are not eligible patients under such part; and

(D) such recommendations as the Secretary considers appropriate, including recommendations as to whether financial assistance under such program should be continued during fiscal years after fiscal year 1990.

Food and Drug
Administration
Act of 1988.

TITLE V—FOOD AND DRUG ADMINISTRATION

21 USC 301 note. **SEC. 501. SHORT TITLE.**

This title may be cited as the “Food and Drug Administration Act of 1988”.

21 USC 393 note. **SEC. 502. FINDINGS.**

Congress finds that—

(1) the public health has been effectively protected by the presence of the Food and Drug Administration during the last eighty years;

(2) the presence and importance of the Food and Drug Administration must be guaranteed; and

(3) the independence and integrity of the Food and Drug Administration need to be enhanced in order to ensure the continuing protection of the public health.

SEC. 503. ESTABLISHMENT OF ADMINISTRATION BY LAW.

(a) **ESTABLISHMENT.**—Chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 391 et seq.) is amended by adding at the end thereof the following new section:

SEC. 903. FOOD AND DRUG ADMINISTRATION.

21 USC 393.

“(a) **IN GENERAL.**—There is established in the Department of Health and Human Services the Food and Drug Administration hereinafter in this section referred to as the “Administration”).

“(b) **COMMISSIONER.**—

President of U.S.

“(1) **APPOINTMENT.**—There shall be in the Administration a Commissioner of Food and Drugs (hereinafter in this section referred to as the “Commissioner”) who shall be appointed by the President by and with the advice and consent of the Senate.

“(2) **GENERAL POWERS.**—The Secretary, through the Commissioner, shall be responsible for—

“(A) providing overall direction to the Food and Drug Administration and establishing and implementing general policies respecting the management and operation of programs and activities of the Food and Drug Administration;

“(B) coordinating and overseeing the operation of all administrative entities within the Administration;

“(C) research relating to foods, drugs, cosmetics, and devices in carrying out this Act;

Research and development.

“(D) conducting educational and public information programs relating to the responsibilities of the Food and Drug Administration; and

“(E) performing such other functions as the Secretary may prescribe.

“(c) **TECHNICAL AND SCIENTIFIC REVIEW GROUPS.**—The Secretary through the Commissioner of Food and Drugs may, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific review groups as are needed to carry out the functions of the Administration, including functions under the Federal Food, Drug, and Cosmetic Act, and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for services as members of such groups.”

(b) **CONFORMING AMENDMENTS.**—Title 5, United States Code, is amended—

(1) in section 5316, by striking out the item relating to the Commissioner of Food and Drugs, Department of Health and Human Services; and

(2) in section 5315, by adding at the end thereof the following new item:

“Commissioner of Food and Drugs, Department of Health and Human Services”.

(c) **EFFECTIVE DATE.**—

21 USC 393 note.

(1) Except as provided in paragraph (2), the amendments made by this title shall take effect on the date of enactment of this Act.

(2) Section 903(b)(1) of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section) shall apply to the appointments of Commissioners of Food and Drugs made after the date of enactment of this Act.

Health
Professions
Reauthorization
Act of 1988.

TITLE VI—HEALTH PROFESSIONS REAUTHORIZATION ACT OF 1988

SEC. 601. SHORT TITLE; REFERENCE.

42 USC 201 note.

(a) **SHORT TITLE.**—This Act may be cited as the “Health Professions Reauthorization Act of 1988”.

(b) **REFERENCE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 602. FEDERAL PROGRAM OF INSURED LOANS TO GRADUATE STUDENTS IN HEALTH PROFESSIONS SCHOOLS.

(a) **ESTABLISHMENT OF ADDITIONAL CREDIT AUTHORITY.**—Section 728(a) (42 U.S.C. 294a(a)) is amended in the first sentence by striking “and” after “1987,” and by inserting before the period the following: “; \$325,000,000 for fiscal year 1989; \$375,000,000 for fiscal year 1990; and \$400,000,000 for fiscal year 1991”.

(b) **EXTENSION OF PERIOD FOR INSURANCE OF NEW LOANS.**—Section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by inserting before the period at the end of the second sentence the following: “, and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans and paying installments for such fiscal year.”; and

(2) in the third sentence by striking “1991,” and inserting “1994,”.

(c) **PROHIBITION AGAINST APPORTIONMENTS OF CREDIT AUTHORITY.**—Section 728(a) (42 U.S.C. 294a(a)) is amended by adding at the end the following new sentence: “The total principal amount of Federal loan insurance available under this subsection shall be granted by the Secretary without regard to any apportionment for the purpose of chapter 15 of title 31, United States Code, and without regard to any similar limitation.”.

(d) **PRIORITY IN PROVISION OF INSURANCE.**—Section 728(b) (42 U.S.C. 294a(b)) is amended by inserting “(1)” after the subsection designation and by adding at the end the following new paragraph:

“(2) In providing certificates of insurance under section 732 through comprehensive contracts, the Secretary shall give priority to eligible lenders that agree—

“(A) to make loans to students at interest rates below the rates prevailing, during the period involved, for loans covered by Federal loan insurance pursuant to this subpart; or

“(B) to make such loans under terms that are otherwise favorable to the student relative to the terms under which

eligible lenders are generally making such loans during such period.”.

(e) **FREQUENCY OF COMPOUNDING OF INTEREST.**—Section 731(a)(2)(D)) (42 U.S.C. 294d(a)(2)(D)) is amended by inserting “not more frequently than” after “compounded”.

(f) **DETERMINATION OF FINANCIAL NEED OF STUDENTS.**—Section 731 (42 U.S.C. 294d) is amended by adding at the end the following new subsection:

“(e) With respect to any determination of the financial need of a student for a loan covered by Federal loan insurance under this subpart, this subpart may not be construed to limit the authority of any school to make such allowances for students with special circumstances as the school determines appropriate.”.

(g) **AUTHORITY FOR ASSIGNMENT OF LOANS WITH RESPECT TO SECONDARY MARKET.**—Section 732(d) (42 U.S.C. 294e(d)) is amended by striking “eligible lender, or” and inserting the following: “eligible lender (including a public entity in the business of purchasing student loans), or”.

(h) **CLARIFICATION WITH RESPECT TO REFERENCE TO HOLDERS OF FEDERALLY INSURED LOANS.**—Section 733(d) (42 U.S.C. 294f(d)) is amended in the first sentence by inserting “eligible lender or” before “holder”;

(i) **AMOUNT OF LOSS PURSUANT TO DEFAULT.**—Section 733(e)(2) (42 U.S.C. 294f(e)(2)) is amended by inserting before the semicolon the following: “, less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved”.

(j) **CLARIFICATION WITH RESPECT TO EFFECT OF BANKRUPTCY.**—Section 733(g) (42 U.S.C. 294f(g)) is amended by inserting “any chapter of” before “title 11.”.

(k) **PROVISIONS WITH RESPECT TO ACTIONS FOR DEFAULT.**—

(1) Section 733(a) (42 U.S.C. 294f(a)) is amended by striking “(including, if appropriate, commencement of a suit)” and inserting the following: “(including, subject to subsection (h), commencement and prosecution of an action)”.

(2) Section 733 (42 U.S.C. 294f) is amended—

(A) in subsection (b), by adding at the end thereof the following new sentence: “The Secretary may sell without recourse to eligible lenders (or other entities that the Secretary determines are capable of dealing in such loans) notes or other evidence of loans received through assignment under the first sentence.”; and

(B) by adding at the end the following new subsections:

“(h)(1) With respect to the default by a borrower on any loan covered by Federal loan insurance under this subpart, the Secretary shall, under subsection (a), require an eligible lender or holder to commence and prosecute an action for such default unless—

“(A) in the determination of the Secretary—

“(i) the eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful with respect to such efforts, or

“(ii) prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

“(B) for such loans made before the date of the enactment of the Health Professions Reauthorization Act of 1988, the loan involved was made in an amount of less than \$5,000; or

“(C) for such loans made after such date, the loan involved was made in an amount of less than \$2,500.

“(2) With respect to an eligible institution that has commenced an action pursuant to subsection (a), the Secretary shall make the payment required in such subsection, or deny the claim for such payment, not later than 60 days after the date on which the eligible institution notifies the Secretary that judgment has been entered with respect to the action.

“(i) The Secretary may establish reasonable limits for default rates for borrowers in each of the health professions identified in section 737(1). If the eligible institutions within any of the health professions, taken as a group, exceed such limits, the Secretary may suspend, terminate, or otherwise restrict the eligibility of such group of schools for borrowing under this section.”.

(1) STATE DESIGNATIONS OF ELIGIBLE LENDERS.—Section 737(2) (42 U.S.C. 294j(2)) is amended—

(1) by striking “or” after “State,” the second place such term appears; and

(2) by inserting before the period the following: “, or a non-profit private entity designated by the State, regulated by the State, and approved by the Secretary”.

(m) REISSUANCE AND REFINANCING AGREEMENTS AUTHORIZED.—Subpart I of part C of title VII (42 U.S.C. 294 et seq.) is amended by adding at the end thereof the following new section:

42 USC 294l-1.

“SEC. 739A. REISSUANCE AND REFINANCING OF CERTAIN LOANS.

“(a) IN GENERAL.—Any borrower who received a loan insured under this subpart bearing an interest rate that is fixed at a rate in excess of 12 percent per year may enter into an agreement with the eligible lender that made such loan for the reissuance of such loan in order to permit the borrower to obtain for such loan the interest rate in effect for loans insurable under this subpart on the date the borrower submits an application to such lender for such reissuance.

“(b) PROCEDURES.—

“(1) DISCHARGE BY OBTAINING LOAN.—Any borrower who received a loan under this subpart bearing an interest rate that is fixed at a rate in excess of 12 percent per year may obtain a loan from an eligible lender (other than the original lender) for the purpose of discharging the loan from such original eligible lender. A loan made for such purpose—

“(A) shall bear interest at the interest rate in effect for loans insurable under this subpart on the date the borrower submits an application for a loan under this subsection; and

“(B) shall be applied to discharge the borrower from any remaining obligation to the original eligible lender with respect to the original loan.

“(2) CERTIFICATION.—Each new eligible lender may accept certification from the original eligible lender to the borrower’s original loan in lieu of presentation of the original promissory note.

“(c) TIME OF PAYMENT.—Any loan reissued under subsection (a) or refinanced under subsection (b) shall be payable during the repayment period applicable to the loan made under this subpart prior to the date of enactment of this section, and such reissuance or refinancing shall not result in the extension of the duration of the loan.

(d) ADMINISTRATIVE COSTS.—An eligible lender reissuing a loan under subsection (a) or refinancing a loan under subsection (b) may charge a borrower an amount not in excess of \$100 to cover the administrative costs of such reissuance or refinancing.

(e) INSURANCE.—The reissuance of a loan under subsection (a) or refinancing of a loan under subsection (b) shall not affect any insurance applicable to such loan, and no additional insurance premium may be charged with respect to such loan.

(f) NOTIFICATION.—Each holder of a loan made under this subpart shall, not later than January 1, 1989, in the case of loans made before the date of enactment of this section, notify the borrower of such loan—

“(1) of the reissuance or refinancing options for which the borrower is eligible under this section;

“(2) of those options which will be made available by the holder; and

“(3) that, with respect to any option that the holder will not make available, the holder will, to the extent practicable, refer the borrower to an eligible lender offering such option.

(g) REGULATIONS.—The Secretary shall promulgate regulations to implement this section.

(h) DEFINITION.—For purposes of this section, the term ‘eligible lender’ includes the Student Loan Marketing Association.”.

603. FEDERAL CAPITAL CONTRIBUTIONS INTO STUDENT LOAN FUNDS.

(a) STANDARDS WITH RESPECT TO LOAN COLLECTION.—Section 294m(c)(1) (42 U.S.C. 294m(c)(1)) is amended by adding at the end the following new sentence: “This subsection may not be construed to require such schools to reimburse the student loan fund under this part for loans that became uncollectible prior to August 1985 or penalize such schools with respect to such loans.”.

(b) REDUCTION IN INTEREST RATE.—Section 741(e) (42 U.S.C. 741(e)) is amended by striking “9” and inserting “5”.

(c) GRACE PERIOD FOR ALL FULL-TIME STUDENTS.—Section 741(c)(1) (42 U.S.C. 294n(c)(1)) is amended by striking “and” at the end of paragraph (B) and by adding at the end the following new paragraph:

“(D) during which the borrower is pursuing a full-time course of study at such a school; and”.

(d) STRIKING OF DATE CERTAIN WITH RESPECT TO DISTRIBUTION OF ASSETS OF LOAN FUNDS.—Section 743 (42 U.S.C. 294p) is amended—

(1) in subsection (a), by amending the matter preceding paragraph (1) to read as follows: “If a school terminates a loan fund established under an agreement pursuant to section 740(b), or if the Secretary for good cause terminates the agreement with the school, there shall be a capital distribution as follows”; and

(2) by amending subsection (b) to read as follows:

(b) If a capital distribution is made under subsection (a), the school involved shall, after the capital distribution, pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school in payment of principal or interest on loans made from the loan fund established pursuant to section 740(b) as was determined by the Secretary under subsection (a).”.

SEC. 604. LOAN REPAYMENT PROGRAM FOR ALLIED HEALTH PERSONNEL.

Part C of title VII (42 U.S.C. 294 et seq.) is amended by inserting after subpart II the following new subpart:

“Subpart III—Loan Repayment Program for Allied Health Personnel

42 USC 294r.

“SEC. 751. ESTABLISHMENT OF PROGRAM.

“(a) **IN GENERAL.**—The Secretary shall establish a program of entering into agreements with allied health personnel and with allied health professions students under which such individuals agree, in consideration of the agreement described in subsection (b) (relating to loan repayment), to serve as an allied health professional for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a rural health clinic, in a rural health facility that is a sole community provider, in any other rural hospital, in a rural home health agency, in a rural or urban hospital that serves a substantial number of patients pursuant to title XIX of the Social Security Act, in a private nursing facility 60 percent of whose patients are patients pursuant to title XIX of such Act, in a public nursing facility, in a migrant health center, in a community health center, or in a health facility determined by the Secretary to have a critical shortage of nurses.

“(b) **PAYMENTS BY FEDERAL GOVERNMENT.**—The agreement referred to in subsection (a) is an agreement, made by the Federal Government in consideration of the agreement described in paragraph (1) with respect to service as an allied health professional, under which the Federal Government agrees to pay—

“(1) for the first year of such service, 30 percent of the balance of the principal and interest of the educational loans of the individual;

“(2) for the second year of such service, 30 percent of such balance; and

“(3) for the third year of such service, 25 percent of such balance.

“(c) **ADMINISTRATION.**—With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III, the provisions of such subpart shall, except as inconsistent with this section, apply to the program established in this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this section, there are authorized to be appropriated \$2,000,000 for each of the fiscal years 1989 through 1991.”.

SEC. 605. SCHOLARSHIPS FOR FIRST-YEAR STUDENTS OF EXCEPTIONAL FINANCIAL NEED.

(a) **SCHOLARSHIPS FOR STUDENTS OF EXCEPTIONAL FINANCIAL NEED.**—Section 758 (42 U.S.C. 294z) is amended—

(1) in subsection (a), by striking out “and who are in their first year of study at such school”; and

(2) in subsection (b)—

(A) in paragraph (1), by striking out “in their first year of study at such school”;

(B) in paragraph (2)—

(i) by striking out “shall consist” and inserting in lieu thereof “may consist of all or part”; and

(ii) by inserting “not in excess” before “of \$400” in subparagraph (B);

(C) in paragraph (5), by inserting “maximum allowable” before “monthly stipend”; and

(D) by striking out paragraph (6).

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Section 758(d) (42 U.S.C. 294z(d)) is amended by striking “and” after “1987,” and inserting before the period the following: “, \$7,300,000 for fiscal year 1989, \$30,000,000 for fiscal year 1990, and \$30,000,000 for fiscal year 1991”.

SEC. 606. CAPITATION GRANTS FOR SCHOOLS OF PUBLIC HEALTH.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Section 770(e) (42 U.S.C. 295f) is amended by striking “and” after “1987,” and by inserting before the period the following: “, \$4,700,000 for fiscal year 1989, and \$3,000,000 for fiscal year 1990”.

(b) **SUNSET PROVISION.**—Part E of title VII (42 U.S.C. 295f et seq.) is amended by adding at the end the following new section:

“SEC. 773. SUNSET PROVISION.

“Effective October 1, 1990, this part is repealed.”.

SEC. 607. AUTHORIZATION OF APPROPRIATIONS FOR PROJECT GRANTS FOR ESTABLISHMENT OF DEPARTMENTS OF FAMILY MEDICINE.

Section 780(d) (42 U.S.C. 295g(d)) is amended—

(1) by striking “There” and inserting “For the purpose of carrying out this section, there”;

(2) by striking “and” after “1987,” and inserting after “1988” the following: “, and \$7,000,000 for each of the fiscal years 1989 through 1991”; and

(3) by striking “for payments under grants under subsection (a)”.

SEC. 608. AREA HEALTH EDUCATION CENTERS.

(a) **MINIMUM NUMBER OF INDIVIDUALS IN CERTAIN INTERNSHIPS.**—Section 781(d)(2)(C) (42 U.S.C. 295g-1(d)(2)(C)) is amended by striking “six” and inserting “four”.

(b) **AUTHORIZATION OF APPROPRIATIONS FOR GENERAL PROGRAM OF AREA HEALTH EDUCATION CENTERS.**—(1) Section 781(a) (42 U.S.C. 295g-1(a)) is amended by adding at the end of paragraph (2) the following new subparagraph:

“(C) In the case of the requirement that an area health education center be neither a school of medicine or osteopathy, the parent institution of such a school, nor a branch campus or other subunit of a school of medicine or osteopathy or its parent institution, or a consortium of such entities, to be eligible to enter into a contract under this section, the Secretary shall waive such requirement with respect to an area health education center having, at the time of initial application to enter into such contract under this section or a previous authorizing law, an operating program supported by both appropriations of a State legislature and local resources.”.

(2) Section 781(d)(2)(F) is amended by striking out “and nurse practitioners” and inserting in lieu thereof “, nurse practitioners, and nurse midwives”.

Contracts.

(3) Section 781(h) (as redesignated by subsection (c)(1) of this section) is amended in the first sentence—

(A) by striking “There are authorized” and all that follows through “this section” and inserting the following: “For the purpose of carrying out this section other than subsection (f), there are authorized to be appropriated”; and

(B) by striking “and” after “1987,” and inserting before the period the following: “, \$18,700,000 for the fiscal year 1989, and \$20,000,000 for each of the fiscal years 1990 and 1991”.

(c) **HEALTH EDUCATION AND TRAINING CENTERS.**—Section 781 (42 U.S.C. 295g-1) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by adding after subsection (e) the following new subsection:

Contracts.

“(f)(1) The Secretary shall enter into contracts with schools of medicine and osteopathy for the purpose of planning, developing, establishing, maintaining, and operating health education and training centers—

Mexico.

“(A) to improve the supply, distribution, quality, and efficiency of personnel providing (in the United States) health services along the border between the United States and Mexico;

Minorities.
Urban areas.
Rural areas.

“(B) to improve the supply, distribution, quality, and efficiency of personnel providing, in other urban and rural areas (including frontier areas) of the United States, health services to any population group, including Hispanic individuals, that has demonstrated serious unmet health care needs; and

“(C) to encourage health promotion and disease prevention through public education in the areas described.

“(2) The Secretary may not enter into a contract under paragraph (1) unless the applicant for such assistance agrees, in carrying out the purpose described in such paragraph, to enter into arrangements with one or more public or nonprofit private entities in the State that have expertise in providing health education to the public.

Mexico.

“(3) The Secretary shall, after consultation with health education and training centers, designate the geographic area in which each such center will carry out the purpose described in paragraph (1). The service area of such a center shall be located entirely within the State in which the center is located. Each border health education and training center shall be located in a county (or other political subdivision) of the State in close proximity to the border between the United States and Mexico.

“(4) The Secretary may not enter into a contract under paragraph (1) unless the applicant for such assistance agrees—

“(A) to establish an advisory group comprised of health service providers, educators and consumers from the service area; and of faculty from participating schools;

“(B) after consultation with such advisory group, to develop a plan for carrying out the purpose described in paragraph (1) in the service area;

“(C) to enter into contracts, as needed, with other institutions or entities to carry out such plan; and

“(D) to be responsible for the evaluation of the program

“(5) The Secretary may not make a grant or enter into a contract under paragraph (1) unless the applicant for such assistance agrees—

“(A) to evaluate the specific service needs for health care personnel in the service area;

“(B) to assist in the planning, development, and conduct of training programs to meet the needs identified pursuant to subparagraph (A);

“(C) to conduct or support not less than one training and education program for physicians and one program for nurses for at least a portion of the clinical training of such students;

“(D) to conduct or support training in health education services, including training to prepare community health workers to implement health education programs in communities, health departments, health clinics, and public schools that are located in the service area;

“(E) to conduct or support continuing medical education programs for physicians and other health professionals (including allied health personnel) practicing in the service area;

“(F) to support health career educational opportunities designed to provide students residing in the service area with counseling, education, and training in the health professions;

“(G) with respect to border health education and training centers, to assist in coordinating its activities and programs carried out pursuant to paragraph (1)(A) with any similar programs and activities carried out in Mexico along the border between the United States and Mexico; and

“(H) to make available technical assistance in the service area in the aspects of health care organization, financing and delivery.

6) In carrying out this subsection, the Secretary shall ensure

—“(A) not less than 75 percent of the total funds provided to a school or schools of medicine or osteopathy will be expended in the development and operation of the health education and training center in the service area of such program;

“(B) to the maximum extent feasible, the school of medicine or osteopathy will obtain from nongovernmental sources the amount of the total operating funds for such program which are not provided by the Secretary;

“(C) no grant or contract shall provide funds solely for the planning or development of a health education and training center program for a period in excess of two years;

“(D) not more than 10 percent of the annual budget of each program may be utilized for the renovation and equipping of clinical teaching sites; and

“(E) no grant or contract shall provide funds to be used outside the United States except as the Secretary may prescribe for travel and communications purposes related to the conduct of a border health education and training center.

7) For purposes of this subsection:

“(A) The term ‘border health education and training center’ means an entity that is a recipient of a contract under paragraph (1) and that is carrying out (or will carry out) the purpose described in subparagraph (A) of such paragraph.

“(B) The term ‘health education and training center’ means an entity that is a recipient of a contract under paragraph (1).

“(C) The term ‘service area’ means, with respect to a health education and training center, the geographic area designated for the center under paragraph (3).

“(8)(A) Of the amounts appropriated pursuant to subsection (h)(2) for a fiscal year, the Secretary shall make available 50 percent for allocations each fiscal year for applications approved by the Secretary for border health education and training centers. The amount of the allocation for each such center shall be determined in accordance with subparagraph (B).

“(B) The amount of an allocation under subparagraph (A) for a fiscal year shall be determined in accordance with a formula prescribed by the Secretary, which formula shall be based—

“(i) with respect to the service area of the border health education and training center involved, on the low-income population, including Hispanic individuals, along the border between the United States and Mexico and the growth rate of such population;

“(ii) on the need of such population for additional personnel to provide health care services along such border; and

“(iii) on the most current information concerning mortality and morbidity and other indicators of health status for such population.”

42 USC 295g-1.

(d) **AUTHORIZATION OF APPROPRIATIONS FOR HEALTH EDUCATION AND TRAINING CENTERS.**—Section 781(h) (as redesignated by subsection (c)(1) of this section) is amended by inserting “(1)” after the subsection designation and by adding at the end the following new paragraph:

“(2) For the purpose of carrying out subsection (f), there are authorized to be appropriated \$4,000,000 for fiscal year 1989, \$8,000,000 for fiscal year 1990, and \$12,000,000 for fiscal year 1991.”

SEC. 609. AUTHORIZATION OF APPROPRIATIONS FOR GRANTS FOR TRAINING, TRAINEESHIPS, AND FELLOWSHIPS IN GENERAL INTERNAL MEDICINE AND GENERAL PEDIATRICS.

(a) **COORDINATION CRITERIA.**—Section 784(b) (42 U.S.C. 295g-4(b)) is amended by inserting before the period the following: “, and coordination of curriculum development and resident teaching activities with departments of family medicine where there is a department within the same school”.

(b) **AUTHORIZATIONS.**—Section 784(c) (42 U.S.C. 295g-4(c)) is amended—

(1) by striking “There” and all that follows through “section” and inserting “For the purpose of carrying out this section, there are authorized to be appropriated”; and

(2) by striking “and” after “1987,” and by inserting before the period the following: “, \$23,000,000 for fiscal year 1989, \$23,000,000 for fiscal year 1990, and \$25,000,000 for fiscal year 1991”.

SEC. 610. FAMILY MEDICINE AND GENERAL PRACTICE OF DENTISTRY.

(a) **GENERAL PRACTICE OF DENTISTRY.**—Part F of title VII (42 U.S.C. 295g et seq.) is amended—

42 USC 295g-6.

(1) in section 786—

(A) in the title, by striking “AND GENERAL PRACTICE OF DENTISTRY”; and

(B) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively; and

(2) by inserting after section 784 the following new section:

"SEC. 785. RESIDENCY PROGRAMS IN GENERAL PRACTICE OF DENTISTRY.

42 USC 295g-5.

"(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, any public or nonprofit private school of dentistry or accredited postgraduate dental training institution—

Grants.
Contracts.

"(1) to plan, develop, and operate an approved residency program in the general practice of dentistry or an approved advanced educational program in the general practice of dentistry; and

"(2) to provide financial assistance (in the form of traineeships and fellowships) to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

"(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated \$4,000,000 for fiscal year 1989, \$6,000,000 for fiscal year 1990, and \$8,000,000 for fiscal year 1991."

(b) AUTHORIZATION OF APPROPRIATIONS FOR FAMILY MEDICINE.—Section 786(c) (as redesignated by subsection (a)(1)(B) of this section) is amended to read as follows:

42 USC 295g-6.

"(c) For the purpose of carrying out this section, there are authorized to be appropriated \$37,900,000 for fiscal year 1989, \$40,000,000 for fiscal year 1990, and \$40,000,000 for fiscal year 1991."

SEC. 611. EDUCATIONAL ASSISTANCE TO INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

Schools and colleges.

(a) AUTHORITY FOR STIPENDS FOR ADDITIONAL CATEGORIES OF STUDENTS.—Section 787(a)(2) (42 U.S.C. 295g-7(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by inserting after subparagraph (F) the following new paragraph:

"(G) paying such stipends as the Secretary may approve for such individuals for any period of education at any school described in subsection (a)(1), except schools of medicine, osteopathy, or dentistry."

(b) INCREASED ENROLLMENTS.—Section 787 (42 U.S.C. 295g-7) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by adding after subsection (a) the following:

"(b)(1) Schools of medicine, osteopathy, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatry, and public and nonprofit schools that offer graduate programs in clinical psychology that receive a grant under subsection (a) shall, during a period of 3 years commencing on the date of the award of the grant, increase their first year enrollments of individuals from disadvantaged backgrounds by at least 20 percent over enrollments in the base year 1987.

"(2) The Secretary shall give priority for funding, in years subsequent to the expiration of the 3-year period described in paragraph (1)—

"(A) to schools that attain such increase in their first year enrollment by the end of such 3-year period, and

"(B) to schools that attain a 20 percent increase over such base year enrollment.

“(3) The requirement for at least a 20 percent increase in such enrollment shall apply only to those schools referred to in paragraph (1) that have a total enrollment of such individuals from disadvantaged backgrounds that is less than 200 percent of the national average total enrollment of such individuals in all schools of each health professions discipline.

“(4) Determination of both first year and total enrollment of such individuals shall be made by the Secretary in accordance with section 708.”.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended in the first sentence by striking “and” after “1987,” and by inserting before the period the following: “, \$31,200,000 for fiscal year 1989, \$34,000,000 for fiscal year 1990, and \$36,000,000 for fiscal year 1991”.

(d) **SET-ASIDES.**—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended in the second sentence by striking “Not less” and all that follows through “fiscal year” and inserting the following: “Of the amounts appropriated under this section for any fiscal year, 10 percent shall be obligated for community-based programs and 70 percent”.

(e) **STIPENDS.**—Section 787(c) (42 U.S.C. 295g-7(c)) (as so redesignated) is amended by adding at the end the following: “Such stipends shall be administered and awarded in the same manner and subject to the same regulations as scholarships under section 758.”.

(f) **REPORT.**—Not later than September 30, 1991, the Secretary shall prepare and submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that develops a tracking system to evaluate—

(1) the success of the programs established under section 787 of the Public Health Service Act in enhancing the professional education of individuals from disadvantaged backgrounds; and

(2) the gains experienced by institutions in the retention of students from disadvantaged backgrounds.”.

SEC. 612. RETENTION PROGRAM FOR HEALTH PROFESSIONS SCHOOLS WITH INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

Part F of title VII is amended by inserting after section 787 (42 U.S.C. 295g-7) the following new section:

“SEC. 787A. RETENTION PROGRAM FOR HEALTH PROFESSIONS SCHOOLS WITH INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.

“(a) **ESTABLISHMENT.**—The Secretary shall establish a supplemental grant program to award grants to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, or public health that demonstrate sufficient graduation of students from disadvantaged backgrounds.

“(b) **PAYMENT FORMULA.**—

“(1) **IN GENERAL.**—Payments to an eligible institution under this section shall be calculated in accordance with this subsection.

“(2) **ELIGIBLE INSTITUTIONS.**—An institution shall be eligible for funds under this section for a fiscal year in an amount determined under paragraph (5), if the disadvantaged graduate figure for the institution (as determined under paragraph (3))

42 USC 295g-7
note.

42 USC 295g-7a.

Grants.

exceeds the nondisadvantaged graduate figure for the institution (as determined under paragraph (4)).

“(3) **DISADVANTAGED GRADUATE FIGURE.**—For each fiscal year, the Secretary shall determine the disadvantaged graduate figure for the institution by dividing—

“(A) the number of students from disadvantaged backgrounds who graduated from the institution as part of such class; by

“(B) the number of students from disadvantaged backgrounds who matriculated into the institution as part of a class.

“(4) **NONDISADVANTAGED GRADUATE FIGURE.**—For each fiscal year, the Secretary shall determine the nondisadvantaged graduate figure for the institution by multiplying—

“(A) the quotient determined by dividing—

“(i) the number of students from nondisadvantaged backgrounds who graduated from the institution as part of such class; by

“(ii) the number of students from nondisadvantaged backgrounds who matriculated into the institution as part of a class; by

“(B) 9.

“(5) **AMOUNT OF GRANT.**—An institution determined to be eligible to receive a grant under this subsection shall be entitled to an amount determined by multiplying—

“(A) the quotient determined by dividing—

“(i) the total amount of funds made available to carry out this section during such preceding fiscal year; by

“(ii) the number of students from disadvantaged backgrounds who graduated from eligible institutions during the preceding fiscal year; by

“(B) the number of students from disadvantaged backgrounds who graduated from the eligible institution during such preceding fiscal year.

“(c) **USE OF FUNDS.**—Payment received by the institution under subsection (b) shall be used to provide—

“(1) financial aid services for individuals from disadvantaged backgrounds who choose to attend such institution;

“(2) retention services or for other retention purposes for individuals for disadvantaged backgrounds.

“(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section, \$2,000,000 in each of the fiscal years 1990 and 1991.”

SEC. 613. TWO-YEAR SCHOOLS OF MEDICINE, INTERDISCIPLINARY TRAINING, AND CURRICULUM DEVELOPMENT.

(a) **SPECIAL PROJECTS.**—Section 788 (42 U.S.C. 295g-8(e)) is amended to read as follows:

“SEC. 788. SPECIAL PROJECTS.

“(a) **TWO-YEAR SCHOOLS.**—

“(1) **IN GENERAL.**—The Secretary may make grants to maintain and improve schools that provide the first or last 2 years of education leading to the degree of doctor of medicine or osteopathy. Grants provided under this paragraph to schools that were in existence on September 30, 1985, may be used for construction and the purchase of equipment.

Grants.

“(2) **ELIGIBILITY.**—To be eligible to apply for a grant under paragraph (1), the applicant must be a public or nonprofit school providing the first or last 2 years of education leading to the degree of doctor of medicine or osteopathy and be accredited by or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

Schools and
colleges.

“(b) **FACULTY AND CURRICULUM DEVELOPMENT AND CLINICAL TRAINING SITES.**—

“(1) **GRANTS AND CONTRACTS.**—

“(A) **IN GENERAL.**—The Secretary may make grants to and enter into contracts with any health professions institution or any other public or private nonprofit entity for the development and implementation of model projects in areas such as faculty and curriculum development, and development of new clinical training sites.

“(B) **ALLOCATION OF FUNDS.**—Priority shall be given to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, podiatry, public health, chiropractic, allied health, and to graduate programs at public and nonprofit private schools in health administration and clinical psychology in the allocation of funds under this subsection. Funds shall be allocated to each profession for award within that profession on the basis of competitive applications. Investigator-initiated projects should be encouraged. Funding priorities may be determined by the Secretary on consultation with the health professions schools and the National Advisory Council on the Health Professions Education.

“(C) **PEER REVIEW.**—Any application for a grant to institutions described in subparagraph (A) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts. The Secretary may not approve an application unless a peer review group has recommended it for approval.

“(2) **HEALTH PROFESSIONS INSTITUTIONS AND ALLIED HEALTH INSTITUTIONS.**—

“(A) **SET-ASIDE.**—At least 75 percent of the amounts available for grants and contracts under this subsection from amounts appropriated under subsection (e) shall be obligated for grants to and contracts with health professions institutions and allied health institutions.

“(B) **PEER REVIEW.**—Any application for a grant to institutions described in subparagraph (A) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

“(C) **PREREQUISITES.**—The Secretary may not approve or disapprove an application for a grant to an institution described in subparagraph (A) unless the appropriate peer review group required under subparagraph (B) has recommended such approval and the Secretary has consulted with the National Advisory Council on Health Professions Education with respect to such application.

“(c) **TRAINING IN PREVENTIVE MEDICINE.**—

“(1) **IN GENERAL.**—The Secretary may make grants to and enter into contracts with schools of medicine, osteopathy, and public health to meet the costs of projects—

Grants.
Contracts.

“(A) to plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine; and

“(B) to provide financial assistance to residency trainees enrolled in such programs.

“(2) ADMINISTRATION.—

“(A) AMOUNT.—The amount of any grant under paragraph (1) shall be determined by the Secretary.

“(B) APPLICATION.—No grant may be made under paragraph (1) unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

Regulations.

“(C) ELIGIBILITY.—To be eligible for a grant under paragraph (1), the applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine and support from other faculty members trained in public health and other relevant specialties and disciplines.

“(D) OTHER FUNDS.—Schools of medicine, osteopathy, and public health may use funds committed by State, local, or county public health officers as matching amounts for Federal grant funds for residency training programs in preventive medicine.

“(d) PROGRAMS FOR PHYSICIAN ASSISTANTS.—

“(1) IN GENERAL.—The Secretary may make grants to and enter into contracts with public or nonprofit private schools of medicine and osteopathy and other public or nonprofit private entities to meet the costs of projects to plan, develop, and operate or maintain programs for the training of physician assistants (as defined in section 701(8)).

Grants.
Contracts.

“(2) APPLICATIONS.—No grant or contract may be made under paragraph (1) unless the application therefor contains or is supported by assurances satisfactory to the Secretary that the school or entity receiving the grant or contract has appropriate mechanisms for placing graduates of the training program with respect to which the application is submitted in positions for which they have been trained.

“(e) CERTAIN PROJECTS WITH RESPECT TO HOSPITALS AND SCHOOLS OF PODIATRIC MEDICINE.—The Secretary may make grants to, and enter into contracts with, public and nonprofit private hospitals and schools of podiatric medicine for the purpose of planning and implementing projects in primary care training for podiatric physicians in approved or provisionally approved residency programs which shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

“(f) AUTHORIZATIONS.—(1)(A) For the purpose of carrying out subsections (a), (b), and (e), there are authorized to be appropriated \$2,400,000 for fiscal year 1989, \$4,000,000 for fiscal year 1990, and \$4,000,000 for fiscal year 1991.

“(B) Of the amounts appropriated pursuant to subparagraph (A) for each of the fiscal years 1989 through 1991, the Secretary shall make available 20 percent of such amounts to carry out subsection (a) and 25 percent of such amounts to carry out subsection (e).

"(2)(A) For the purpose of carrying out subsection (c), there are authorized to be appropriated \$1,500,000 for fiscal year 1989, \$2,500,000 for fiscal year 1990, and \$4,000,000 for fiscal year 1991.

"(B) For the purpose of carrying out subsection (d), there are authorized to be appropriated \$4,500,000 for fiscal year 1989, \$5,200,000 for fiscal year 1990, and \$5,400,000 for fiscal year 1991."

SEC. 614. GRANTS FOR MINORITY EDUCATION.

42 USC 295g-8a, 295g-2. (a) REORGANIZATION.—Section 778A (42 U.S.C. 295g-8a) is transferred to immediately after section 781 (42 U.S.C. 295g-1) and redesignated as section 782.

42 USC 295g-2. (b) PERIOD OF GRANTS.—Subsection (b) of section 782 (as transferred and redesignated by subsection (a)) is amended by inserting after "(b)", the following new sentence: "The Secretary may award grants for periods not to exceed 3 years."

(c) ELIGIBILITY.—Subsection (c) of section 782 (as transferred and redesignated by subsection (a)) is amended to read as follows:

"(c) Only health professions schools shall be eligible for a grant under this section, and to be eligible such schools must—

(1) be a school described in section 701(4); and

(2) have received a contract under section 788A for fiscal year 1987."

SEC. 615. GERIATRIC PROGRAMS.

(a) GERIATRIC EDUCATION CENTERS AND GERIATRIC TRAINING.—Part F of title VII is amended by inserting after section 788B (42 U.S.C. 295g-8b) the following new section:

42 USC 295g-9. "SEC. 789. GERIATRIC EDUCATION CENTERS AND GERIATRIC TRAINING.

"(a) GERIATRIC EDUCATION CENTERS.—

Grants.
Contracts.

"(1) IN GENERAL.—The Secretary may make grants to and enter into contracts with accredited health professions schools, including schools of allied health, referred to in section 701(4) or 701(10) and programs referred to in section 701(8) to assist in meeting the costs of such schools or programs of providing projects to—

"(A) improve the training of health professionals in geriatrics;

"(B) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

"(C) expand and strengthen instruction in methods of such treatment;

"(D) support the training and retraining of faculty to provide such instruction;

"(E) support continuing education of health professionals and allied health professionals who provide such treatment; and

"(F) establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

"(2) APPROVAL OF APPLICATIONS.—

"(A) PEER REVIEW.—Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(B) **PREREQUISITES.**—The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under subparagraph (A) and has consulted with the National Advisory Council on Health Professions Education with respect to such application.

"(b) **GERIATRIC TRAINING.**—

"(1) **IN GENERAL.**—The Secretary may make grants to, and enter into contracts with, schools of medicine, schools of osteopathy, teaching hospitals, and graduate medical education programs, for the purpose of providing support (including residencies, traineeships, and fellowships) for geriatric training projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry.

Grants.
Contracts.

"(2) **REQUIREMENTS.**—Each project for which a grant or contract is made under this subsection shall—

"(A) be staffed by full-time teaching physicians who have experience or training in geriatric medicine;

"(B) be staffed, or enter into an agreement with an institution staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

"(C) be based in a graduate medical education program in internal medicine or family medicine, or in a department of geriatrics in existence as of December 1, 1987;

"(D) provide participants in the project with exposure to a population of elderly individuals;

"(E) provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals; and

"(F) provide training in geriatrics through one or both of the training options described in subparagraphs (A) and (B) of paragraph (3).

"(3) **TRAINING OPTIONS.**—The training options referred to in subparagraph (F) of paragraph (2) shall be as follows:

"(A) A 1-year retraining program in geriatrics for—

"(i) physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathy; and

"(ii) dentists who are faculty members at schools of dentistry or at hospital departments of dentistry.

"(B) A 1-year or 2-year internal medicine or family medicine fellowship program providing emphasis in geriatrics, which shall be designed to provide training in clinical geriatrics and geriatrics research for—

"(i) physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine; and

“(ii) dentists who have completed post-doctoral dental education programs.

“(4) DEFINITIONS.—For purposes of this subsection:

“(A) GRADUATE MEDICAL EDUCATION PROGRAM.—The term ‘graduate medical education program’ means a program sponsored by a school of medicine, a school of osteopathy, a hospital, or a public or private institution that—

“(i) offers postgraduate medical training in the specialties and subspecialties of medicine; and

“(ii) has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

“(B) POST-DOCTORAL DENTAL EDUCATION PROGRAM.—The term ‘post-doctoral dental education program’ means a program sponsored by a school of dentistry, a hospital, or a public or private institution that—

“(i) offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

“(ii) has been accredited by the Commission on Dental Accreditation.

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) GERIATRIC EDUCATION CENTERS.—For grants and contracts under subsection (a), there are authorized to be appropriated \$7,000,000 for fiscal year 1989, \$10,000,000 for fiscal year 1990, and \$13,000,000 for fiscal year 1991.

“(2) GERIATRIC TRAINING.—For grants and contracts under subsection (b), there are authorized to be appropriated \$7,000,000 for fiscal year 1989, \$10,000,000 for fiscal year 1990, and \$13,000,000 for fiscal year 1991.”

(b) CONFORMING AMENDMENTS.—Section 783 (42 U.S.C. 295g-3) is repealed.

SEC. 616. GENERAL PROVISIONS.

(a) MINIMUM AMOUNT OF GRANT FOR CERTAIN GRANTEEES.—Section 790 (42 U.S.C. 295g-10) is amended—

(1) in paragraph (3), by striking “The amount” and inserting the following: “Except as provided in paragraph (4), the amount”; and

(2) by adding at the end the following new paragraph:

“(4) With respect to grants under any of sections 780, 784, 785, and 786 for fiscal year 1989 and subsequent fiscal years, if an entity has been a grantee under the section involved for two consecutive fiscal years and the Secretary approves an application under such section from the entity for any subsequent consecutive fiscal year, the amount of the grant for such fiscal year may not be less than an amount equal to 20 percent of the average of the amounts received under such section by the entity for the consecutively preceding fiscal years.”

(b) REQUIREMENT OF PEER REVIEW FOR CERTAIN PROGRAMS.—Section 790 (42 U.S.C. 295g-10), as amended by subsection (a) of this section, is further amended by adding at the end the following new paragraph:

“(5)(A) Each application for a grant under any of sections 784 through 786 shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the evalua-

tion. Each application for a grant under section 780 may be submitted to such peer review group for such an evaluation.

“(B) The Secretary shall establish such peer review groups as may be necessary to carry out subparagraph (A). The Secretary shall make appointments to the peer review groups from among appropriately qualified persons who are not officers or employees of the United States.

“(C) With respect to applications referred to in subparagraph (A), a peer review group established pursuant to such subparagraph shall report its findings and recommendations to the Secretary. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

“(D) This paragraph shall be carried out by the Secretary, acting through the Administrator of the Health Resources and Services Administration.”.

(C) CERTAIN PROVISIONS WITH RESPECT TO HISPANIC INDIVIDUALS AND OTHER MEMBERS OF MINORITY GROUPS.—

(1) Section 708(b)(2) (42 U.S.C. 292h(b)(2)) is amended by adding at the end the following new sentence: “Such studies shall include studies determining by specialty and geographic location the number of health professionals (including allied health professionals and health care administration personnel) who are members of minority groups, including Hispanics, and studies providing by specialty and geographic location evaluations and projections of the supply of, and requirements for, health professionals (including allied health professionals and health care administration personnel) to serve minority groups, including Hispanics.”.

(2)(A) The Secretary of Health and Human Services shall conduct a study for the purpose of determining—

42 USC 292h
note.

(i)(I) the extent to which health care is being provided to Hispanic individuals in medically underserved areas by health care professionals who are unable to communicate with such individuals in the most appropriate language and cultural context; and

(II) whether the extent of the provision of health care to Hispanic individuals by such health care professionals is detrimental to the health of such individuals; and

(ii)(I) the extent to which Hispanic individuals in medically underserved areas rely on allied health personnel as the primary source of health care;

(II) whether the extent of such reliance is detrimental to the health of such individuals; and

(III) if the extent of such reliance is detrimental to such individuals, whether area health education center programs (as defined in section 781(g), as redesignated by section 608(c)(1) of this Act) can be utilized with respect to providing appropriate health care to such individuals.

(B) The Secretary of Health and Human Services shall, not later than 1 year after the date of the enactment of this Act, complete the study required in subparagraph (A) and submit to the Congress a report describing the findings made as a result of the study.

Reports.

SEC. 617. SPECIAL PROJECTS.

Part F of title VII (42 U.S.C. 295f-2 et seq.) is amended by adding at the end the following new section:

42 USC 295g-11.

Contracts.

“SEC. 790A. SPECIAL PROJECTS.

“(a) GRANTS.—The Secretary may make grants to, and enter into contracts with, schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects—

“(1) for preventive medicine;

“(2) for health promotion and disease prevention;

“(3) for increasing the enrollment in such schools of individuals from disadvantaged backgrounds (as determined in accordance with criteria established by the Secretary under section 787(a)); and

“(4) to improve access and quality in health care.

“(b) PROHIBITIONS.—The Secretary may not make a grant under subsection (a) unless—

“(1) an application for the grant is submitted to the Secretary;

“(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

“(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

“(c) LIMITATIONS.—The Secretary may make a grant under this subsection only—

“(1) pursuant to the issuance of solicitations for such grants; and

“(2) if the application for such a grant has been recommended for approval by an appropriate peer review group.

“(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out subsection (a), there are authorized to be appropriated \$1,500,000 for fiscal year 1989, \$3,500,000 for fiscal year 1990, and \$5,000,000 for fiscal year 1991.”.

SEC. 618. GRANTS FOR GRADUATE PROGRAMS IN HEALTH ADMINISTRATION.

(a) MINIMUM NUMBER OF STUDENTS.—Section 791(c)(2)(A)(i) (42 U.S.C. 295h(c)(2)(A)(i)) is amended—

(1) by striking “25” and inserting “15”; and

(2) by striking “except that” and all that follows through “in such school year”.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 791(d) (42 U.S.C. 295h(d)) is amended by striking “and” after “1987,” and by inserting before the period the following: “, \$1,420,000 for fiscal year 1989, \$1,420,000 for fiscal year 1990, and \$1,700,000 for fiscal year 1991”.

SEC. 619. AUTHORIZATION OF APPROPRIATIONS FOR TRAINEESHIPS FOR STUDENTS IN OTHER GRADUATE PROGRAMS.

Section 791A(c) (42 U.S.C. 295h-1a(c)) is amended by striking “and” before “\$500,000” and by inserting before the period the following: “, and \$500,000 for each of the fiscal years 1989 through 1991”.

SEC. 620. PROVISIONS WITH RESPECT TO GRADUATE PROGRAMS IN CLINICAL PSYCHOLOGY.**(a) DEFINITION OF GRADUATE PROGRAM IN CLINICAL PSYCHOLOGY.—**

(1) Section 701(4) (42 U.S.C. 292a(4)) is amended by inserting at the end the following new sentence: "The term 'graduate program in clinical psychology' means an accredited graduate program in a public or nonprofit private institution in a State which provides training leading to a doctoral degree in clinical psychology or an equivalent degree."

(2) Section 701 (42 U.S.C. 292a) is amended by striking paragraph (14).

(b) NATIONAL ADVISORY COUNCIL ON HEALTH PROFESSIONS EDUCATION.—Section 702(a) (42 U.S.C. 292b(a)) is amended—

(1) in the first sentence, by striking "twenty members appointed" and inserting "twenty-one members appointed"; and

(2) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking "twelve" and inserting "thirteen"; and

(B) in subparagraph (A), by inserting before the semicolon the following: "and graduate programs in clinical psychology".

(c) DISCRIMINATION ON BASIS OF SEX.—Section 704 (42 U.S.C. 292d) is amended—

(1) in the first sentence, by inserting after "allied health personnel" the following: ", or graduate program in clinical psychology,"; and

(2) in the second sentence, by striking "school or training center" and inserting "school, training center, or graduate program".

SEC. 621. AUTHORIZATION OF APPROPRIATIONS FOR PUBLIC HEALTH TRAINEESHIPS.

Section 792(c) (42 U.S.C. 295h-1b(c)) is amended by striking "and" after "1987," and by inserting before the period the following: "; \$4,100,000 for fiscal year 1989; \$4,200,000 for fiscal year 1990; and \$4,300,000 for fiscal year 1991".

SEC. 622. TRAINING OF HEALTH PROFESSIONALS WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

Section 788B is amended to read as follows:

"SEC. 788B. TRAINING WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

42 USC 295g-8b.

"(a) GRANTS.—The Secretary may make grants and enter into contracts to assist schools and academic health science centers in meeting the costs of projects—

Contracts.
Health care
professionals.

"(1) to train the faculty of schools and graduate departments of medicine, nursing, osteopathy, dentistry, public health, psychology, and allied health to teach health professions students to provide for the health care needs of individuals with acquired immune deficiency syndrome;

"(2) with respect to improving clinical skills in the diagnosis, treatment, and prevention of such syndrome, to educate and train the health professionals and clinical staff of schools of medicine, osteopathy, and dentistry; and

"(3) to develop and disseminate curricula relating to the care and treatment of individuals with acquired immune deficiency syndrome.

Minorities.

"(b) PREFERENCE.—In making grants under subsection (a), the Secretary shall give preference to projects which will—

"(1) train, or result in the training of, health professionals who will provide treatment for minority individuals with acquired immune deficiency syndrome and other individuals who are at high risk of contracting such syndrome; and

"(2) train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with acquired immune deficiency syndrome.

"(c) APPLICATION.—No grant or contract may be made under subsection (a) unless an application is submitted to the Secretary in such form, at such time, and containing such information, as the Secretary may prescribe.

"(d) PEER REVIEW.—

"(1) IN GENERAL.—An application for a grant or contract under subsection (a) shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(2) LIMITATION.—The Secretary may not approve an application for a grant or contract under subsection (a) unless the appropriate peer review group required under paragraph (1) has recommended such approval and the Secretary has consulted with the National Advisory Council on Health Professions Education with respect to such application.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (a), such sums as may be necessary for each of the fiscal years 1989 through 1991.

"(f) DENTAL SCHOOLS.—

Grants.

"(1) IN GENERAL.—The Secretary may make grants to assist dental schools and programs described in section 788(e)(4)(B) with respect to oral health care to AIDS patients.

"(2) APPLICATION.—Each dental school or program described in section 788(e)(4)(B) may annually submit an application documenting the unreimbursed costs of oral health care provided to AIDS patients by that school or hospital during the prior year.

"(3) DISTRIBUTION.—The Secretary shall distribute the available funds among all eligible applicants, taking into account the number of AIDS patients served and the unreimbursed oral health care costs incurred by each institution as compared with the total number of patients served and costs incurred by all eligible applicants.

"(4) The Secretary shall not make a grant under this subsection if doing so would result in any reduction in State funding allocation for such purposes.

"(5) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this subsection, there is authorized to be appropriated such sums as may be necessary in fiscal year 1990 and fiscal year 1991."

SEC. 623. DEFINITIONS.

(a) SCHOOL OF ALLIED HEALTH.—Section 701(10) (42 U.S.C. 292a(10)) is amended—

(1) in the matter preceding subparagraph (A), by striking “university—” and inserting “university or hospital-based educational entity—”; and

(2) in subparagraph (B), by inserting before the semicolon the following: “(except that this subparagraph shall not apply to any hospital-based educational entity)”.

(b) ALLIED HEALTH PROFESSIONALS.—Section 701(13)(C) (42 U.S.C. 292a(13)(C)) is amended—

(1) by striking out “an individual” and inserting in lieu thereof “a health professional”;

(2) by striking out “or” before “a doctoral degree in clinical psychology”; and

(3) by inserting before the period the following: “, or a degree in social work or an equivalent degree”.

SEC. 624. ALLIED HEALTH PROJECT GRANTS AND CONTRACTS.

Section 796 (42 U.S.C. 295h-5) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following new subsection:

“(a) The Secretary shall make grants to and enter into contracts with eligible entities to assist them in meeting the costs of planning, developing, establishing, operating, and evaluating projects relating to:

“(1) Improving and strengthening the effectiveness of allied health administration, program directors, facility, and clinical faculty.

“(2) Improving and expanding program enrollments in those professions in greatest demand and whose services are most needed by the elderly.

“(3) Interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly.

“(4) Demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research.

“(5) Adding and strengthening curriculum units in allied health programs to include knowledge and practice concerning prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics.

“(6) The recruitment of individuals into allied health professions, including projects for—

“(A) the identification and recruitment of highly qualified individuals, including the provision of educational and work experiences for recruits at the secondary and collegiate levels;

“(B) the identification and recruitment of minority and disadvantaged students, including the provision of remedial and tutorial services prior and subsequent to admission, the provision of work-study programs for secondary students, and recruitment activities directed toward primary school students; and

“(C) the coordination and improvement of recruitment efforts among official and voluntary agencies and institutions, including official departments of education, at the city, county, and State, or regional level.”;

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

Research and development.

Schools and colleges.

Minorities. Disadvantaged persons.

Schools and colleges.

“(c) For purposes of subsection (a), the term ‘eligible entities’ means entities which are—

“(1) schools, universities, or other educational entities which provide for allied health personnel education and training and which meet such standards as the Secretary may by regulation prescribe; or

“(2) other public or nonprofit private entities capable, as determined by the Secretary, of carrying out projects described in subsection (a).”; and

(3) by striking out subsection (d) and inserting in lieu thereof the following new subsection:

Appropriation authorization.

“(d) For the purpose of making payments under grants and contracts under subsection (a), there are authorized to be appropriated \$2,000,000 for each of the fiscal years 1990 and 1991.”.

SEC. 625. TRAINEESHIPS FOR ADVANCED TRAINING OF ALLIED HEALTH PERSONNEL.

Section 797 (42 U.S.C. 295h-6) is amended to read as follows:

“SEC. 797. TRAINEESHIPS FOR ADVANCED TRAINING OF ALLIED HEALTH PERSONNEL.

Contracts.

“(a) **GRANTS.**—The Secretary may make grants to and enter into contracts with training centers for allied health professions to meet the costs of projects designed to—

“(1) plan, develop, establish, expand, and operate doctoral programs for the advanced speciality training of allied health professionals who plan to teach and conduct research in an allied health training program; and

“(2) provide financial assistance in the form of traineeships or fellowships to doctoral students who are participants in any such program and who plan to teach and conduct research in an allied health discipline or to post doctoral students who are continuing specialized study and research in an allied health discipline.

“(b) **LIMITATION.**—The Secretary shall limit grants and contracts made or entered into under subsection (a) to those allied health fields or specialties as the Secretary shall, from time to time, determine to have—

“(1) the most significant national or regional shortages of practitioners;

“(2) insufficient numbers of qualified faculty in entry level or advanced educational programs; and

“(3) a significant role in the care and rehabilitation of patients and clients who are elderly or disabled.

“(c) **AUTHORIZATION OF APPROPRIATIONS.**—For the purposes of making payments under grants under subsection (a), there are authorized to be appropriated \$2,000,000 for each of the fiscal years 1990 and 1991.

“(d) **AVAILABILITY OF FUNDS.**—Funds appropriated under this section for any fiscal year shall remain available until expended or through fiscal year 1991.”.

SEC. 626. ALLIED HEALTH PROFESSIONS DATA.

Section 708 (42 U.S.C. 292h) is amended by adding at the end the following:

Grants.
Contracts.

“(h)(1) In carrying out subsection (a), the Secretary may make grants, or enter into contracts and cooperative agreements with, and

provide technical assistance to, any nonprofit entity in order to establish a uniform allied health professions data reporting system to collect, compile, and analyze data on the allied health professions personnel.

“(2) In the first report under subsection (d) made 2 years after the date of enactment of this Act and in each biennial report thereafter, the Secretary include a description and analysis of data collected pursuant to paragraph (1).”.

SEC. 627. COUNCIL ON GRADUATE MEDICAL EDUCATION.

Section 799 (42 U.S.C. 295i) is amended by adding at the end the following:

“(k) There is authorized to be appropriated \$1,000,000 for each of the fiscal years 1989, 1990, and 1991 to carry out this section.”.

Appropriation
authorization.

SEC. 628. REFERENCES WITH RESPECT TO PODIATRIC MEDICINE.

Title VII (42 U.S.C. 292a et seq.) is amended—

- (1) in section 701— 42 USC 292a.
 - (A) in paragraph (4), by striking “school of podiatry” and inserting “school of podiatric medicine,” and by striking “doctor of podiatry” and inserting “doctor of podiatric medicine”; and
 - (B) in paragraph 13(C), by striking “podiatry” and inserting “podiatric medicine”;
- (2) in section 702(a)(1)(A), by striking “podiatry,” and inserting “podiatric medicine,”; 42 USC 292b.
- (3) in section 704, in the first sentence, by striking “podiatry,” and inserting “podiatric medicine,”; 42 USC 292d.
- (4) in section 721— 42 USC 293a.
 - (A) in subsection (c)(3), in subparagraphs (A) and (B), by striking “podiatry,” each place it appears and inserting “podiatric medicine,”;
 - (B) in subsection (d)(1)(A), by striking “podiatry,” and inserting “podiatric medicine,”; and
 - (C) in subsection (f)—
 - (i) in paragraph (1), in the first sentence, by striking “podiatry,” and inserting “podiatric medicine,”; and
 - (ii) in paragraph (3)(A), by striking “podiatry,” and inserting “podiatric medicine,”;
- (5) in section 729(a), in the first and second sentences, by striking “podiatry,” each place it appears and inserting “podiatric medicine,”; 42 USC 294b.
- (6) in section 737(1), by striking “podiatry,” and inserting “podiatric medicine,”; 42 USC 294j.
- (7) in section 740— 42 USC 294m.
 - (A) in subsection (a), by striking “podiatry,” and inserting “podiatric medicine,”;
 - (B) in subsection (b)(4), by striking “podiatry” and inserting “podiatric medicine”; and
 - (C) in subsection (c)—
 - (i) in paragraph (1), by striking “podiatry,” and inserting “podiatric medicine,”; and
 - (ii) in paragraph (3)(C), by striking “podiatry,” and inserting “podiatric medicine,”;
- (8) in section 741— 42 USC 294n.
 - (A) in subsection (b)(1), by striking “podiatry” and inserting “podiatric medicine”;

(B) in subsection (f)(1)(A), by striking "podiatry" and inserting "podiatric medicine"; and

(C) in subsection (l)(4), by striking "podiatry," and inserting "podiatric medicine,";

42 USC 294z.

(9) in section 758(a), by striking "podiatry," and inserting "podiatric medicine,";

42 USC 295g-7.

(10) in section 787(a)(1), by striking "podiatry," and inserting "podiatric medicine,"; and

42 USC 295g-8.

(11) in section 788—

(A) in subsection (c)(1), in the first sentence, by striking "podiatry," and inserting "podiatric medicine,"; and

(B) in subsection (f), by striking "podiatry" and inserting "podiatric medicine".

Schools and colleges.

SEC. 629. REFERENCES WITH RESPECT TO OSTEOPATHIC MEDICINE.

(a) TECHNICAL AMENDMENTS TO TITLE III.—Title III (42 U.S.C. 241 et seq.) is amended—

(1) in section 327A(b)(1), by inserting "schools of osteopathic medicine," after "schools of medicine," and by inserting "professions" after "health";

(2) by striking "osteopathy" each place such term appears and inserting "osteopathic medicine"; and

(3) by striking "osteopaths" each place such term appears.

(b) TECHNICAL AMENDMENTS TO TITLE VII.—Title VII (42 U.S.C. 292a et seq.) is amended—

(1) by striking "school of osteopathy" and "schools of osteopathy" each place such terms appear and inserting "school of osteopathic medicine" and "schools of osteopathic medicine", respectively;

(2) by striking "school of medicine, osteopathy" and "schools of medicine, osteopathy" each place such terms appear and inserting "school of medicine, osteopathic medicine" and "schools of medicine, osteopathic medicine", respectively; and

(3) by striking "medical or osteopathic" each place it precedes "school", "student", or "clinical education" and by inserting "medical (M.D. and D.O.)".

SEC. 630. STUDY BY GENERAL ACCOUNTING OFFICE OF STATE PRACTICES IN ENDORSEMENT LICENSING OF FOREIGN PHYSICIANS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study for the purpose of determining the practices and policies of the States in licensing by endorsement physicians who are graduates of schools of medicine located in countries other than the United States. In carrying out the study, the Comptroller General shall—

(1) with respect to such licensing of such physicians—

(A) make a comparison with the practices and policies of the States in licensing by endorsement physicians who are graduates of American schools of medicine; and

(B) determine the merits of any additional requirements imposed on physicians who are graduates of medical schools of other countries, including a determination of the relative proficiency of such physicians and a determination of the relevancy of any requirement of producing additional information or records;

(2) determine whether the graduates of schools of medicine located in other countries are being discriminated against with respect to licensing by endorsement in the United States; and

(3) if such discrimination is occurring, determine the geographic areas in which the discrimination is occurring and the circumstances under which the discrimination is occurring.

(b) **CONSULTATION WITH APPROPRIATELY QUALIFIED INDIVIDUALS.**—In carrying out the study required in subsection (a), the Comptroller General of the United States shall consult with individuals with appropriate expertise.

(c) **TIME FOR COMPLETION.**—Not later than 9 months after the date of the enactment of this Act, the Comptroller General of the United States shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

Reports.

SEC. 631. IDENTIFICATION AND NOTIFICATION OF POTENTIAL GRANTEEES UNDER CERTAIN PROGRAMS.

42 USC 295g-8
note.

The Secretary of Health and Human Services shall identify entities that would be appropriate applicants for grants under section 788(a) of the Public Health Service Act (42 U.S.C. 295g-8(a)) and shall notify such entities of such fact.

SEC. 632. RESEARCH WITH RESPECT TO HEALTH RESOURCES AND SERVICES ADMINISTRATION.

42 USC 241 note.

With respect to any program of research pursuant to the Public Health Service Act, any such program carried out in fiscal year 1987 by an agency other than the Health Resources and Services Administration (or appropriate to be carried out by such an agency) may not, for each of the fiscal years 1989 through 1991, be carried out by such Administration.

SEC. 633. REQUIREMENTS WITH RESPECT TO APPLICATION AND AWARD PROCESS FOR CERTAIN PROGRAMS.

42 USC
295g-10a.

(a) **SEMIANNUAL GRANT SOLICITATIONS.**—With respect to grants under any of sections 780, 784, 785, and 786 for fiscal year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants, and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

(b) **PRELIMINARY REVIEW FOR TECHNICAL SUFFICIENCY.**—In reviewing applications for grants referred to in subsection (a), the Secretary shall—

(1) make a preliminary review of each such application in order to determine whether the application involved is sufficient with respect to the minimum technical requirements established by the Secretary for applications under the program involved; and

(2) if the Secretary determines pursuant to the preliminary review that any such application is not sufficient with respect to such requirements—

(A) prepare a statement explaining the insufficiencies of the application; and

(B) return the application, together with such statement by a date that permits the applicant involved a sufficient period of time in which to prepare a timely second application for submission pursuant to the solicitation with respect to which the first application is being returned.

SEC. 634. ESTABLISHMENT OF LOAN REPAYMENT PROGRAM FOR RESEARCH AT NATIONAL INSTITUTES OF HEALTH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(a) **IN GENERAL.**—Part F of title IV is amended by inserting at section 487 the following new section:

42 USC 288-1.

“SEC. 487A. LOAN REPAYMENT PROGRAM FOR RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME.

“(a) IMPLEMENTATION OF PROGRAM.—

“(1) IN GENERAL.—Not later than one year after the date of the enactment of the Health Professions Reauthorization Act of 1988, the Secretary shall, subject to paragraph (2), establish and implement a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct, as employees of the National Institutes of Health, research with respect to acquired immune deficiency syndrome in consideration of the Federal Government agreeing to repay, for each year of such service, not more than \$20,000 of the principal and interest of the educational loans of such health professionals.

“(2) LIMITATION.—The Secretary may not enter in an agreement with a health professional pursuant to paragraph (1) unless such professional—

“(A) has a substantial amount of educational loans outstanding relative to income; and

“(B) was not employed at the National Institutes of Health during the 1-year period preceding the date of the enactment of the Health Professions Reauthorization Act of 1988.

“(b) APPLICATION.—With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part C of title III, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—For the purpose of carrying out subsection (a), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1993.

“(2) AVAILABILITY.—Amounts appropriated pursuant to paragraph (1) for a fiscal year shall remain available until the expiration of the second fiscal year beginning after the first year for which the amounts were appropriated.”.

SEC. 635. NATIONAL RESEARCH SERVICE AWARDS WITH RESPECT TO TITLE VII PROGRAMS.

Section 487(d)(3) (42 U.S.C. 288) is amended by inserting at the end “made available”, the first time such appears, the following: “to the Secretary, acting through the Administrator of the Health Resources and Services Administration,”.

**SEC. 636. CLARIFICATION WITH RESPECT TO APPLICABILITY OF CERTAIN
FEDERAL REGULATIONS TO SECONDARY MARKETS FOR STUDENT
LOANS.**

Section 728(c) (42 U.S.C. 294a(c)) is amended by adding at the end the following new paragraph:

“(3) With respect to Federal regulations for lenders, this subpart may not be construed to preclude the applicability of such regulations to the Student Loan Marketing Association or to any other entity in the business of purchasing student loans, including such regulations with respect to applications, contracts, and due diligence.”.

SEC. 637. HEALTH CARE FOR RURAL AREAS.

(a) **HEALTH CARE FOR RURAL AREAS.**—Title VII of the Public Health Service Act is amended by adding at the end thereof the following:

“PART I—HEALTH CARE FOR RURAL AREAS

“SEC. 799A. HEALTH CARE FOR RURAL AREAS.

42 USC 295j.

Contracts.

“(a) **GRANTS.**—The Secretary may make grants to, or enter into contracts with, any eligible applicant to help such applicant fund authorized activities under an application approved under subsection (d).

“(b) **USE OF AMOUNTS.**—

“(1) **IN GENERAL.**—Amounts provided under subsection (a) shall be used by the recipients to fund interdisciplinary training projects designed to—

“(A) use new and innovative methods to train health care practitioners to provide services in rural areas;

“(B) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

“(C) deliver health care services to individuals residing in rural areas;

“(D) enhance the amount of relevant research conducted concerning health care issues in rural areas; and

“(E) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

“(2) **METHODS.**—A recipient of funds under subsection (a) may use various methods in carrying out the projects described in paragraph (1), including—

“(A) the distribution of stipends to students of eligible applicants;

“(B) the establishment of a post-doctoral fellowship program;

“(C) the training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

“(D) the purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

“(3) **ADMINISTRATION.**—

Schools and colleges.

“(A) IN GENERAL.—An applicant shall not use more than 10 percent of the funds made available to such applicant under subsection (a) for administrative expenses.

“(B) TRAINING.—Not more than 10 percent of the individuals receiving training with funds made available to an applicant under subsection (a) shall be trained as doctors of medicine or doctors of osteopathy.

“(c) ELIGIBLE APPLICANTS.—Applicants eligible to obtain funds under subsection (a) shall include local health departments, nonprofit organizations and public or nonprofit colleges, universities, schools of, or programs that specialize in, nursing, psychology, social work, optometry, public health, dentistry, osteopathy, physical therapy, assistants, pharmacy, podiatry, medicine, chiropractic, and allied health professions if such applicants submit applications approved by the Secretary under subsection (d). Applicants eligible to obtain funds under subsection (a) shall not include for-profit entities, either directly or through a subcontract or subgrant.

“(d) APPLICATIONS.—

“(1) SUBMISSION.—In order to receive a grant under subsection (a) an entity shall submit an application to the Secretary.

“(2) FORMS.—An application submitted under this subsection shall be in such form, be submitted by such date, and contain such information as the Secretary shall require.

“(3) REQUIREMENTS.—Applications submitted under this subsection shall—

“(A) be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals and academic institutions in establishing long-term collaborative relationships with health care providers in rural areas;

“(B) designate a rural health care agency or agencies to provide clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, facilities operated by the Indian Health Service, an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Acts, or Native Hawaiian health centers; and

“(C) provide any additional information required by the Secretary.

“(e) STUDY.—

Contracts.

“(1) IN GENERAL.—The Secretary shall enter into a contract to conduct a study of manpower training needs in rural areas, with particular attention focused on the supply of health professionals and whether such supply is adequate to meet the demands for health care services in rural communities.

“(2) CONTENTS.—

“(A) STATISTICS.—The study conducted under paragraph (1) shall include statistics and projections on—

“(i) the supply of health care practitioners in rural areas; and

“(ii) suggested methods of improving access to health care services in rural areas.

The study shall pay particular attention to the needs of the elderly in rural areas as well as the individuals in the rural areas who are not eligible for Medicare.

“(B) EVALUATION.—The study conducted under paragraph (1) shall evaluate existing models for health care training and service delivery and propose innovative alternative models to enhance the quality and availability of health care services in rural areas and to increase the retention of health professionals in rural areas.

“(3) HEALTH CARE TRAINING AND SERVICE DELIVERY MODELS.—The Secretary shall evaluate the effectiveness of the health care training and service delivery models developed with funds made available under this section and compare such models with programs designed to increase the availability of health care providers in rural areas, including the National Health Service Corps program authorized by subpart II of part D of the Public Health Service Act (42 U.S.C. 254d et seq.) and the area health education center program authorized under section 781 of such Act (42 U.S.C. 295g-1).

“(4) SUBMISSION TO CONGRESS.—Not later than 18 months after the date of the signing of the contract for the health care study under paragraph (1), the Secretary shall submit to the appropriate committees of the Congress a report that describes the results of the study conducted under paragraph (1).

Reports.

“(f) PEER REVIEW.—

“(1) IN GENERAL.—Each application for a grant or contract under this section shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application.

“(2) ESTABLISHMENT.—The Secretary shall establish such peer review groups as may be necessary to carry out paragraph (1). The Secretary shall make appointments to the peer review groups from among appropriately qualified persons who are not officers or employees of the United States.

“(3) REPORT OF FINDINGS.—With respect to applications referred to in paragraph (1), a peer review group established pursuant to such subparagraph shall report its findings and recommendations to the Secretary. The Secretary may not approve such an application unless a peer review group has recommended the application for approval.

“(4) ADMINISTRATION.—This paragraph shall be carried out by the Secretary, acting through the Director of the Indian Health Service.

“(g) DEFINITION.—For the purposes of this section, the term ‘rural area’ includes a frontier area, which is an area in which the population density is less than 7 individuals per square mile.

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, other than subsection (e), \$5,000,000 for each of the fiscal years 1989, 1990, and 1991.

“(2) SUBSECTION (e).—There is authorized to be appropriated \$1,000,000 for each of the fiscal years 1989, 1990, and 1991 to carry out subsection (e).”

(b) REPEAL.—Section 714 of the Indian Health Care Amendments of 1988 is repealed upon the date of the enactment of this Act.

42 USC 295j.

SEC. 638. ADVANCEMENT OF HEALTH CARE SERVICES.

(a) IN GENERAL.—Of the amounts appropriated in each of the fiscal years 1989 through 1991 to carry out title VII of the Public Health Service Act, the Secretary of Health and Human Services

shall, for each such fiscal year, make available \$500,000 for the purpose of advancing the health care services furnished by qualified hospitals. For purposes of this subsection, the term "qualified hospital" means a hospital located in a rural county that—

(1) is adjacent to three counties, one of which is a central county of a Metropolitan Statistical Area, and all of which are classified as urban;

(2) has a workforce of which at least 12.2 percent of such workers commute from the rural county to the central counties of the two immediately adjacent Metropolitan Statistical Areas (out-commuting), and the total in-commuting rate from the two immediately adjacent Metropolitan Statistical Areas to the rural county is at least 6.1 percent, so that when added to the out-commuting rate from the rural county the total in/out-commuting rate is at least 18 percent;

(3) is also impacted by a third Metropolitan Statistical Area with an out-commuting rate from the rural county to that Metropolitan Statistical Area that is at least .15 percent and the in-commuting rate from the Metropolitan Statistical Area to such rural county is at least .15 percent;

(4) has more than 73,500 residents but less than 74,000 residents according to the 1980 census; and

(5) that has a health-related labor pool that is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in one of the adjacent Metropolitan Statistical Areas of at least three large health-related facilities, each with more than 375 beds, including a State-owned medical school/hospital complex with more than 4,000 employees, and a large Veterans' Administration hospital with more than 400 beds.

(b) **PRO RATA DETERMINATION.**—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program authorized under title VII of the Public Health Service Act by more than the amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) \$500,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such title VII.

42 USC 292h
note.

State and local
governments.
Territories, U.S.

SEC. 639. ASSESSMENTS OF HEALTH MANPOWER SHORTAGES.

(a) **REQUEST FOR INFORMATION.**—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall contact the chief executive officer of each State, the Mayor of the District of Columbia, and the chief executive officer of the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, and request that each such individual submit to the Secretary an assessment of the greatest health manpower shortages by discipline of health care providers and by allopathic and osteopathic speciality, of such individuals State, District, Commonwealth, or Territory.

(b) **REPORT.**—The Secretary of Health and Human Services shall compile and analyze the information obtained under subsection (a)

and prepare and submit, to the appropriate Committees of Congress, as part of the October 1, 1991, report required under section 708(d)(1) of the Public Health Service Act (42 U.S.C. 292h(d)(1)), a report containing such information and analysis.

TITLE VII—NURSING SHORTAGE REDUCTION AND EDUCATION EXTENSION ACT OF 1988

Nursing
Shortage
Reduction and
Education
Extension Act
of 1988.

SEC. 700. SHORT TITLE.

42 USC 201.

(a) **SHORT TITLE.**—This title may be cited as the “Nursing Shortage Reduction and Education Extension Act of 1988”.

(b) **REFERENCE.**—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

Subtitle A—Special Projects

SEC. 701. SPECIAL PROJECT GRANTS AND CONTRACTS.

(a) **TRANSFER OF PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS.**—Part A of title VIII (42 U.S.C. 296k et seq.) is amended—

(1) by inserting after the heading for such part the following new heading:

“Subpart I—Special Projects in General”,

(2) by striking section 820(a)(1), and

42 USC 296k.

(3) by adding at the end the following new subpart:

“Subpart II—Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds

“SPECIAL PROJECTS

“SEC. 827. (a) The Secretary may make grants to public and nonprofit private schools of nursing and other public or nonprofit private entities, and enter into contracts with any public or private entity, to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary—

Schools and
colleges.
42 USC 296r.

“(1) by identifying, recruiting, and selecting such individuals,

“(2) by facilitating the entry of such individuals into schools of nursing,

“(3) by providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

“(4) by providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

“(5) by paying such stipends (including allowances for travel and dependents) as the Secretary may determine for such individuals for any period of nursing education,

“(6) by publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools, and

“(7) by providing training, information, or advice to the faculty of such schools with respect to encouraging such individuals to complete the programs of nursing education in which the individuals are enrolled.

“(b) No grant or contract may be made under this section unless an application therefor has been submitted to and approved by the Secretary. The Secretary may not approve or disapprove such an application except after consultation with the National Advisory Council on Nurse Education. Such an application shall provide for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

“(c) For payments under grants and contracts under subsection (a), there are authorized to be appropriated \$3,000,000 for fiscal year 1989, \$4,000,000 for fiscal year 1990, and \$5,000,000 for fiscal year 1991.”

(b) **STRIKING OF CERTAIN PROGRAMS.**—Section 820(a) (42 U.S.C. 296k(a)) is amended—

(1) by striking paragraphs (3), (7), and (9), and

(2) by redesignating paragraphs (2), (4), (5), (6), and (8) as paragraphs (1) through (5), respectively.

(c) **GERIATRIC TRAINING.**—Section 820(a)(2) (as redesignated by subsection (b)(2) of this section) is amended to read as follows—

“(2) demonstrate, through geriatric health education centers and other entities, improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);”

(d) **UPGRADING SKILLS.**—Section 820(a) (42 U.S.C. 296k(a)) is amended—

(1) by amending paragraph (3) (as redesignated by subsection (b)(2) of this section) to read as follows:

“(3)(A) increase the supply of adequately trained nursing personnel (including bilingual nursing personnel) to meet the health needs of rural areas; and

“(B) provide nursing education courses to rural areas through telecommunications via satellite;”, and

(2) by amending paragraph (4) (as so redesignated) to read as follows:

“(4) provide training and education—

“(A) to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel with priority given to rapid transition programs toward achievement of professional nursing degrees; and

“(B) to develop curricula for the achievement of baccalaureate degrees in nursing by registered nurses and by individuals with baccalaureate degrees in other fields;”.

(e) **COORDINATION PROJECTS WITH RESPECT TO LOAN REPAYMENTS FOR SERVICE IN HEALTH FACILITIES.**—Section 820(a) (42 U.S.C.

Reports.
Records.

Rural areas.

296k(a)) is amended by adding after paragraph (5) (as redesignated by subsection (b)(2) of this section) the following new paragraph:

"(6)(A) collect the names and addresses of health facilities willing to enter into agreements with nursing students and nursing personnel under which such individuals agree to serve as nurses in the health facilities in consideration of the health facilities agreeing to repay the principal and interest of the educational loans of such individuals;

"(B) collect data on the specific terms of such agreements offered by health facilities;

"(C) collect the names and addresses of nursing students identified pursuant to section 827(a), of other nursing students, and of nursing personnel, willing to enter into such agreements; and

"(D) coordinate and facilitate communications between health facilities and such individuals with respect to such agreements."

(f) GERIATRIC HEALTH EDUCATION CENTERS.—Section 820 (42 U.S.C. 296k) is amended—

(1) by redesignating subsections (b) through (d) as subsections (e) through (g), respectively, and

(2) by adding after subsection (a) the following new subsection:

"(b)(1) The Secretary may make grants to, and enter into contracts with, accredited schools of nursing to assist in meeting the costs of such schools in providing projects—

"(A) to improve the training of nurses in geriatrics;

"(B) to develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

"(C) to expand and strengthen instruction in methods of such treatment;

"(D) to support the training and retraining of faculty to provide such instruction;

"(E) to support continuing education of nurses who provide such treatment; and

"(F) to establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric health care.

"(2)(A) Any application for a grant or contract under this subsection shall be subject to appropriate peer review by peer review groups composed principally of non-Federal experts.

"(B) The Secretary may not approve or disapprove an application for a grant or contract under this subsection unless the Secretary has received recommendations with respect to such application from the appropriate peer review group required under paragraph (1) and has consulted with the Advisory Council on Nurses Education with respect to such application.

"(C) For the purpose of carrying out this subsection, the Secretary may obligate each fiscal year not more than \$2,000,000 of the amounts made available for such purpose pursuant to subsection g(2)."

(g) INNOVATIVE HOSPITAL NURSING PRACTICE MODELS.—Section 820 (42 U.S.C. 296k), as amended by subsection (f) of this section, is further amended by inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary may make grants to public and nonprofit private entities for the purpose of demonstrating innovative hospital

nursing practice models designed to reduce vacancies in professional nursing positions and to make such positions a more attractive career choice.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that hospital nursing practice models demonstrated pursuant to such subsection will include initiatives—

"(A) to restructure the role of the professional nurse, through changes in the composition of hospital staffs and through innovative approaches for interaction between hospital administration and nursing personnel, in order to ensure that the particular expertise of such nurses is efficiently utilized and that such nurses are engaged in direct patient care during a larger proportion of their work time;

"(B) to test innovative wage structures for professional nurses in order to—

"(i) reduce vacancies in work shifts during unpopular work hours; and

"(ii) provide financial recognition based upon experience and education; and

"(C) to evaluate the effectiveness of providing benefits for professional nurses, such as pensions, sabbaticals, and payment of educational expenses, as a means of developing increased loyalty of such nurses to health care institutions and reducing turnover in nursing positions."

(h) LONG-TERM CARE NURSING PRACTICE DEMONSTRATIONS.—Section 820 (42 U.S.C. 296k), as amended by subsection (g) of this section, is further amended by inserting after subsection (c) the following new subsection:

"(d)(1) The Secretary may make grants to public and nonprofit private entities accredited for the training of nurses for the purpose of—

"(A) demonstrating innovative nursing practice models for—

"(i) the provision of case-managed health care services (including adult day care) and health care services in the home; or

"(ii) the provision of health care services in long-term care facilities; or

"(B) developing projects to increase the exposure of nursing students to clinical practice in nursing home, home health, and gerontologic settings through collaboration between such accredited entities and entities that provide health care in such settings.

"(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that models demonstrated pursuant to such paragraph will be designed—

"(A) to increase the recruitment and retention of nurses to provide nursing care for individuals needing long-term care; and

"(B) to improve nursing care in home health care settings and nursing homes."

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 820(g) (as redesignated by subsection (b)(2) of this section) is amended to read as follows:

"(g)(1) For payments under grants and contracts under this section, there are authorized to be appropriated \$13,000,000 for fiscal

Wages.

year 1989, \$16,000,000 for fiscal year 1990, and \$20,000,000 for fiscal year 1991.

“(2) Of the amounts appropriated pursuant to paragraph (1), the Secretary shall obligate not less than 20 percent to carry out subsection (a)(2) and subsection (b) (subject to subsection (b)(2)(C)), not less than 20 percent to carry out paragraph (3) of subsection (a), and not less than 10 percent to carry out paragraph (4) of such subsection. Of the amounts appropriated pursuant to paragraph (1) for fiscal year 1989, the Secretary shall obligate not less than 20 percent to carry out section 827.”.

SEC. 702. ADVANCED NURSE EDUCATION.

Section 821(b) (42 U.S.C. 2961(b)) is amended to read as follows:

“(b) For payments under grants and contracts under this section, there are authorized to be appropriated \$13,000,000 for fiscal year 1989, \$13,000,000 for fiscal year 1990, and \$20,000,000 for fiscal year 1991.”.

Appropriation
authorization.

SEC. 703. NURSE PRACTITIONER AND NURSE MIDWIFE PROGRAMS.

(a) **REQUIRED NUMBER OF STUDENTS IN TRAINING PROGRAMS.**—Section 822(a)(2)(B)(ii) (42 U.S.C. 296m(a)(2)(B)(ii)) is amended by striking “not less than eight students” and inserting “not less than six full-time equivalent students”.

(b) **COMMITMENT UNDER TRAINEESHIP PROGRAM TO SERVE IN CERTAIN AREAS OR FACILITIES.**—Section 822(b)(3) (42 U.S.C. 296m(b)(3)) is amended by striking “332” and all that follows and inserting the following: “332), in an Indian Health Service health center, in a Native Hawaiian health center, in a public health care facility, in a migrant health center (as defined in section 329(a)(1)), in a rural health clinic (as defined in section 1861(aa)(2) of the Social Security Act), or in a community health center (as defined in section 330(a))”.

(c) **ASSURANCES OF COMPLIANCE WITH GUIDELINES.**—Section 822(c) (42 U.S.C. 296m(c)) is amended—

(1) by inserting “under subsection (a) or (b)” after “operate a program”; and

(2) by striking “midwives unless this application” and inserting “midwives unless the application”.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—Section 822(d) (42 U.S.C. 296m(d)) is amended to read as follows:

“(d) For payments under grants and contracts under subsections (a) and (b), there are authorized to be appropriated \$12,000,000 for fiscal year 1989, \$17,000,000 for fiscal year 1990, and \$21,000,000 for fiscal year 1991.”.

SEC. 704. ENHANCEMENT OF QUALITY CARE.

(a) **IN GENERAL.**—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available \$650,000 for the purpose of enhancing the ability of a qualified hospital to provide high-quality inpatient services. For purposes of this subsection, the term “qualified hospital” means a hospital that, as of the date of the enactment of this Act, is the only general short-term acute care hospital located in a rural county that is adjacent to 7 counties, of which 1 such adjacent county is a county described in paragraph (8)(B) of section 1886(d) of the Act referred to in section 371(b)(1)(C) of the Public Health Service Act and, of the remaining 6

such adjacent counties, 5 such counties are (or are treated as) urban counties for purposes of such section 1886(d) and 1 such county is not (or is not treated as) an urban county for purposes of such section.

(b) **PRO RATA DETERMINATION.**—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) \$650,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 705. IMPROVING HEALTH CARE SERVICES.

(a) **IN GENERAL.**—Of the amounts appropriated for each of the fiscal years 1989 through 1991 to carry out titles VII and VIII of the Public Health Service Act, the Secretary of Health and Human Services shall, for each of such fiscal years, make available \$210,000 for the purpose of improving the health care services furnished by a qualified hospital. For purposes of this subsection, the term “qualified hospital” means a hospital located in a rural county—

(1) that is adjacent to 6 counties, of which 3 adjacent counties are urban (2 of the urban counties being located in another State), and of which 2 of the adjacent rural counties are without hospital facilities,

(2) that is located within 7 miles of another urban county in a separate Metropolitan Statistical Area from the Metropolitan Statistical Area in which the urban counties adjacent to the rural counties are located,

(3) that has more than 17,500 residents but less than 17,550 residents according to the 1980 census,

(4) that has a workforce of which more than 39.5 percent of those reporting workplace commute to the adjacent urban counties to the 1980 census, and

(5) that has a health-related labor pool which is competitively impacted by, in addition to the normal competitive pressures of an urban labor market, the location in 1 of the adjacent urban counties (in another State) of several large health-related facilities, including that State’s sole State-owned medical school/hospital complex with more than 5,500 employees, a large Veterans’ Administration hospital with more than 1,000 beds, and a United States Army hospital with more than 350 beds.

(b) **PRO RATA DETERMINATION.**—In making available amounts for a fiscal year for purposes of subsection (a), the Secretary of Health and Human Services may not reduce the amounts available for each program of titles VII and VIII of the Public Health Service Act by more than an amount equal to the product of—

(1) the amounts appropriated, after the date of the enactment of this Act, for carrying out the program involved for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) \$210,000; divided by

(B) the amounts appropriated, after the date of the enactment of this Act, for carrying out such titles VII and VIII.

SEC. 706. INCENTIVE SPECIAL PAY FOR PUBLIC HEALTH SERVICE NURSES.Uniformed
services.

Subsection (a) of section 208 (42 U.S.C. 210(a)) is amended by adding at the end the following new paragraph:

“(3) Commissioned nurse officers in the Regular and Reserve Corps shall, while in active duty, be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed Forces under chapter 5 of title 37, United States Code.”.

SEC. 707. EXTENSION OF PERIOD FOR INSURANCE OF NEW LOANS.

Section 728(a) (42 U.S.C. 294a(a)) is amended—

(1) by inserting before the period at the end of the second sentence the following: “, and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans (including loans to new borrowers) and paying installments for such fiscal year.”; and

(2) in the third sentence by striking “1991,” and inserting “1994.”.

Subtitle B—Assistance to Nursing Students

SEC. 711. TRAINEESHIPS FOR ADVANCED EDUCATION OF PROFESSIONAL NURSES.

(a) **TRAINEESHIPS FOR CERTAIN PART-TIME STUDENTS IN ADVANCED NURSING PROGRAMS.**—Section 830 (42 U.S.C. 297) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

“(c)(1) The Secretary may make grants to public and nonprofit private schools of nursing to cover the costs of traineeships for students—

Grants.
Schools and
colleges.

“(A) who are enrolled at least half-time in programs offering a masters degree in nursing; and

“(B) who agree to complete the requirements for degrees from such programs not later than the end of the academic year during which the student is to receive the traineeship.

“(2) In making grants under paragraph (1), the Secretary shall give special consideration to applications for traineeship programs that educate nursing students to serve in and prepare for practice as nurse practitioners, clinical specialists, or nurse midwives.”.

(b) **AUTHORIZATION OF APPROPRIATIONS FOR TRAINEESHIP PROGRAMS.**—Section 830 (42 U.S.C. 297) is amended by amending subsection (d) (as redesignated by subsection (a) of this section) to read as follows:

“(d)(1)(A) For the purposes of subsections (a) and (c), there are authorized to be appropriated \$13,000,000 for fiscal year 1989, \$15,000,000 for fiscal year 1990, and \$16,000,000 for fiscal year 1991.

“(B) Of the amounts made available pursuant to subparagraph (A), the Secretary shall make available not less than 25 percent to carry out subsection (c).

“(2) For the purposes of subsection (b), there is authorized to be appropriated \$1,100,000 for each of the fiscal years 1989 through 1991.”.

SEC. 712. NURSE ANESTHETISTS.**(a) TRAINEESHIPS AND OTHER PROGRAMS.—**

(1) Section 831(a)(1) (42 U.S.C. 297-1(a)(1)) is amended to read as follows:

Grants.

“(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists and to cover the costs of projects to develop and operate programs for the education of nurse anesthetists. In order to be eligible for such a grant, the program of an institution must be accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.”

Regulations.

(2) Section 831(a)(2) (42 U.S.C. 297-1(a)(2)) is amended by amending the second sentence to read as follows: “Payments for traineeships shall be limited to such amounts as the Secretary determines to be necessary to cover the costs of tuition and fees and a stipend and allowances (including travel and subsistence expenses) for trainees.”

(b) **AUTHORIZATION OF APPROPRIATIONS.**—The first sentence of section 831(c) (42 U.S.C. 297-1(c)) is amended to read as follows: “For the purpose of making grants under this section, there is authorized to be appropriated \$1,800,000 for each of the fiscal years 1989 through 1991.”

SEC. 713. LOAN PROVISIONS.

(a) **RULE OF CONSTRUCTION WITH RESPECT TO CERTAIN UNCOLLECTABLE LOANS.**—Section 835(c)(1) (42 U.S.C. 297a(c)(1)) is amended by adding at the end the following new sentence: “With respect to the student loan fund established pursuant to such agreements, this subsection may not be construed to require such schools to reimburse such loan fund for loans that became uncollectable prior to 1983.”

(b) **INCREASES WITH RESPECT TO ANNUAL AND AGGREGATE LOAN TOTALS.**—Section 836(a) (42 U.S.C. 297b(a)) is amended—

(1) in the first sentence, by inserting before the period the following: “, except that for the final two academic years of the program involved, such total may not exceed \$4,000”; and

(2) in the second sentence, by striking “\$10,000” and inserting “\$13,000”.

(c) **PREFERENCE CATEGORY OF EXCEPTIONAL FINANCIAL NEED.**—Section 836(a) (42 U.S.C. 297b(a)) is amended in the third sentence by striking “practical nurses and” and inserting “practical nurses, to persons with exceptional financial need, and”.

(d) **REDUCTION OF ELIGIBILITY STANDARD OF NEED.**—Section 836(b)(1)(C) (42 U.S.C. 297b(b)(1)(C)) is amended to read as follows: “(C) with respect to any student enrolling in the school after June 30, 1986, is of financial need (as defined in regulations issued by the Secretary).”

(e) **DEFERRAL PERIOD FOR HALF-TIME PROFESSIONAL TRAINING.**—Section 836(b)(2)(B) (42 U.S.C. 297b(b)(2)(B)) is amended—

(1) by striking “(up to five years)” and inserting “(up to ten years)”; and

(2) by inserting after “full-time” the following: “or half-time”.

(f) **REDUCTION IN INTEREST RATE.**—Section 836(b)(5) (42 U.S.C. 297b(b)(5)) is amended by striking “6 per centum” and inserting “5 percent”.

(g) **STRIKING OF LOW-INCOME PROVISIONS WITH RESPECT TO LOAN REPAYMENT.**—Section 836(j) (42 U.S.C. 297b(j)) is amended by adding “and” at the end of paragraph (2), by striking paragraph (3), and by redesignating paragraph (4) as paragraph (3).

(h) **USE OF CERTAIN UNEXPENDED FUNDS FOR ALLOTMENTS.**—

(1) Section 838(a)(3) (42 U.S.C. 297d(a)(3)) is amended—

(A) by inserting “(A)” after the paragraph designation; and

(B) by adding at the end the following new subparagraph:

“(B) With respect to funds available pursuant to subparagraph (A), any such funds returned to the Secretary and not allotted by the Secretary, during the period of availability specified in such subparagraph, shall be available to carry out section 843 and, for such purpose, shall remain available until expended.”.

(2) Except as provided in Public Law 100-436, the amendment made by paragraph (1) shall take effect as if such amendment had been effective on September 30, 1988, and as if section 843 of the Public Health Service Act, as added by section 715 of this title, had been effective on such date.

(i) **EXTENSION OF DATE CERTAIN FOR CAPITAL DISTRIBUTION.**—Section 839 (42 U.S.C. 297e) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “1991” and inserting “1994”; and

(B) in paragraph (1), by striking “1991” and inserting “1994”; and

(2) in subsection (b), by striking “1991” each place it appears and inserting “1994”.

Effective date.
42 USC 297d
note.

SEC. 714. LOAN REPAYMENTS FOR SERVICE IN CERTAIN HEALTH FACILITIES.

(a) **AGREEMENTS FOR LOAN REPAYMENTS.**—Section 836(h)(1)(C) (42 U.S.C. 297b(h)(1)(C)) is amended to read as follows:

“(C) who enters into an agreement with the Secretary to serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses;”.

(b) **PRIORITIES WITH RESPECT TO AGREEMENTS.**—Section 836(h) (42 U.S.C. 297b(h)) is amended by adding at the end the following new paragraph:

“(5) In entering into agreements under paragraph (1), the Secretary shall give priority—

“(A) to applicants with the greatest financial need; and

“(B) to applicants that, with respect to health facilities described in such paragraph, agree to serve in such health facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.”.

(c) **DEFINITIONS.**—Section 836(h) (42 U.S.C. 297b(h)), as amended by subsection (b) of this section, is further amended by adding at the end the following new paragraph:

“(6) For purposes of this subsection:

“(A) The term ‘community health center’ has the meaning given such term in section 330(a).

“(B) The term ‘migrant health center’ has the meaning given such term in section 329(a)(1).

“(C) The term ‘nursing facility’ has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

“(D) The term ‘rural health clinic’ has the meaning given such term in section 1861(aa)(2) of the Social Security Act.”.

(d) AUTHORIZATION OF APPROPRIATIONS FOR LOAN REPAYMENTS.—Subpart II of part B of title VIII (42 U.S.C. 297a et seq.) is amended by inserting after section 837 the following new section:

**“AUTHORIZATION OF APPROPRIATIONS FOR LOAN REPAYMENTS FOR
SERVICE IN CERTAIN HEALTH FACILITIES**

42 USC 297o-1.

“SEC. 837A. For the purpose of payments under agreements entered into under section 836(h), there is authorized to be appropriated \$5,000,000 for each of the fiscal years 1989 through 1991.”.

SEC. 715. NURSING SCHOLARSHIPS.

Part B of title VIII (42 U.S.C. 297 et seq.) is amended by adding at the end the following new subpart:

“Subpart III—Scholarships

“UNDERGRADUATE EDUCATION OF PROFESSIONAL NURSES

Grants.

42 USC 297j.

“SEC. 843. (a) The Secretary may make grants to public and nonprofit private schools accredited for the training of professional nurses for the purpose of providing scholarships to individuals who are enrolled (or accepted for enrollment) as nursing students of such schools and who are in financial need with respect to attending such schools.

“(b) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will give preference to individuals from disadvantaged backgrounds (as determined in accordance with criteria prescribed by the Secretary under section 844(a)).

“(c) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in providing scholarships pursuant to the grant, the applicant will provide a scholarship to an individual only if the individual agrees that, upon graduating from the program of nursing education offered by the applicant, the individual will serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

“(d) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that a scholarship provided pursuant to such subsection for attendance at a school described in such subsection may not, for any year of such attendance for which the scholarship is made, provide an amount exceeding an amount

equal to the amount of the tuition and any fees for the year involved.

“(e) For purposes of this section:

“(1) The term ‘community health center’ has the meaning given such term in section 330(a).

“(2) The term ‘migrant health center’ has the meaning given such term in section 329(a)(1).

“(3) The term ‘nursing facility’ has the meaning given such term in section 1919(a) of the Social Security Act (as such section is in effect during fiscal year 1991 and subsequent fiscal years), except that for fiscal years 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the Social Security Act.

“(4) The term ‘rural health clinic’ has the meaning given such term in section 1861(aa)(2) of the Social Security Act.

“(f) For the purpose of making grants under this section, there are authorized to be appropriated \$15,000,000 for fiscal year 1989 and \$30,000,000 for each of the fiscal years 1990 and 1991.”

Appropriation
authorization.

SEC. 716. ESTABLISHMENT OF DEMONSTRATION PROGRAM FOR STUDENT LOANS WITH RESPECT TO SERVICE IN CERTAIN HEALTH CARE FACILITIES IN UNDERSERVED AREAS.

Part B of title VIII (42 U.S.C. 297 et seq.), as amended by section 715 of this title, is further amended by adding at the end the following new subpart:

“Subpart IV—Demonstration Program For Student Loans With Respect to Service in Certain Health Care Facilities in Underserved Areas

“SEC. 847. ESTABLISHMENT OF PROGRAM.

42 USC 297.

“(a) **IN GENERAL.**—The Secretary may, subject to subsections (c) and (d), make loans to individuals to assist the individuals in attending schools of nursing if the individuals enter into contracts with health facilities to engage, in consideration of the agreements made pursuant to subsection (d) (relating to loan repayments), in full-time employment as nurses for a period of time equal to not more than the period of time during which the individuals receive loan assistance under this section.

“(b) **PREFERENCES IN MAKING LOANS.**—In making loans under subsection (a), the Secretary shall give preference to disadvantaged and minority individuals underrepresented in the nursing profession, as determined in accordance with criteria established by the Secretary.

Contracts.
Disadvantaged
persons.
Minorities.

“(c) **CERTAIN REQUIREMENTS WITH RESPECT TO STUDENTS.**—The Secretary may not make a loan under subsection (a) unless—

“(1) the applicant for the loan is enrolled (or accepted for enrollment) as a full-time student in a public or nonprofit school accredited for the training of professional nurses;

“(2) the applicant agrees to expend the loan only for the payment of the costs of tuition, reasonable living expenses, books, fees, and necessary transportation; and

“(3) the applicant agrees that, if the applicant is dismissed from the school for academic reasons, voluntarily terminates academic training as a nurse, or violates the contract entered into pursuant to subsection (a), the applicant will be liable to

the United States in an amount equal to 100 percent of the principal and interest due on the loan.

"(d) CERTAIN REQUIREMENTS WITH RESPECT TO HEALTH CARE FACILITIES.—The Secretary may not make a loan under subsection (a) unless, with respect to contracts referred to in such subsection—

"(1) the applicant for the loan has entered into such a contract with a health care facility that is a nonprofit hospital or a long-term care facility certified under title XVIII or XIX of the Social Security Act;

"(2) such health care facility is located in a geographic area that is underserved with respect to the services of nurses, as designated pursuant to subsection (e);

"(3) the contract provides that the health care facility will repay 100 percent of the principal and interest of the loan made to the applicant under subsection (a);

"(4) the contract provides that, in serving as a nurse at the health care facility, the payments made by the facility on behalf of the applicant in repayment of the loan will be in addition to the pay that the applicant would otherwise receive for such service; and

"(5) the contract provides that, in the event the health care facility violates the contract, the facility will be liable to the United States in an amount equal to 100 percent of the principal and interest due on such loan.

Regulations.

"(e) DESIGNATION OF UNDERSERVED GEOGRAPHIC AREAS.—For purposes of subsection (d)(2), the Secretary shall through regulation establish criteria for the designation of such areas. The Secretary may, as appropriate, designate geographic areas using criteria in section 330(b)(4).

"(f) MAXIMUM AMOUNT OF LOAN.—The Secretary may not provide a loan under subsection (a) in an amount exceeding 100 percent of the costs described in subsection (c)(2).

"(g) INTEREST.—Loans awarded under this section shall bear interest on the unpaid balance of the loan at a rate of 5 percent per annum. Such interest shall accrue from the date the individual involved is no longer enrolled in the nursing program.

Regulations.

"(h) WAIVER OR SUSPENSION OF STUDENT OBLIGATIONS.—The Secretary shall by regulation provide for the waiver or suspension of any obligation of any individual receiving a loan under subsection (a) whenever compliance by the individual is impossible or would involve extreme hardship to the individual.

"(i) REQUIREMENT OF APPLICATION.—The Secretary may not make a loan under subsection (a) unless—

"(1) an application for the loan is submitted to the Secretary;

"(2) with respect to carrying out the purpose for which the loan is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

"(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(j) SET-ASIDE WITH RESPECT TO RURAL AREAS.—Of the amounts appropriated for a fiscal year pursuant to subsection (l), the Secretary shall make available not less than 35 percent for loans under subsection (a) to individuals who will, pursuant to such loan, serve as nurses in rural areas designated under subsection (e) as geo-

graphic areas that are underserved with respect to the services of nurses.

“(k) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of making loans under subsection (a), there is authorized to be appropriated \$5,000,000 for the fiscal years 1989 through 1991.

“(l) **SUNSET.**—The authority to make loans under subsection (a) terminates September 30, 1991.”

Subtitle C—General Provisions of Title VIII

SEC. 721. NATIONAL ADVISORY COUNCIL ON NURSE TRAINING.

(a) **IN GENERAL.**—Section 851 (42 U.S.C. 298) is amended—

(1) in the section heading, by striking “NATIONAL ADVISORY COUNCIL ON NURSE TRAINING” and inserting in lieu thereof “ADVISORY COUNCIL ON NURSES EDUCATION”; and

(2) in subsection (a)—

(A) in the first sentence—

(i) by striking “National Advisory Council on Nurse Training” and inserting in lieu thereof “Advisory Council on Nurses Education”; and

(ii) by striking “nineteen” and inserting “twenty-one”; and

(B) in the second sentence, by striking “general public” and inserting the following: “general public, one of the appointed members shall be selected from practicing professional nurses, one of the appointed members shall be selected from among representatives of associate degree schools of nursing”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 820 (42 U.S.C. 296k) is amended—

(A) in subsection (e) (as redesignated by section 701(b)(2)), by striking “National Advisory Council on Nurse Training” and inserting “Advisory Council on Nurses Education”; and

(B) in subsection (f) (as so redesignated), in the second sentence, by striking “National Advisory Council on Nurse Training” and inserting “Advisory Council on Nurses Education”.

(2) Section 856(1) (42 U.S.C. 298b-3(1)) is amended by striking “National Advisory Council on Nurse Training” and inserting “Advisory Council on Nurses Education”.

SEC. 722. EVALUATIONS AND REPORTS.

Part C of title VIII (42 U.S.C. 298 et seq.) is amended by adding at the end the following new section:

“EVALUATIONS

“SEC. 859. (a) The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of projects carried out pursuant to this title and for the dissemination of information developed as result of such projects. Such evaluations shall include an evaluation of the effectiveness of such projects in increasing the recruitment and retention of nurses.

“(b)(1) The Secretary shall, not later than January 10, 1989, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human

42 USC 298b-6.
Contracts.

Resources of the Senate, a report describing the manner in which the Secretary intends to carry out subsection (a).

"(2) The Secretary shall, not later than January 10, 1991, and biannually thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing evaluations carried out pursuant to subsection (a) during the preceding two fiscal years.

"(c) Of the amounts appropriated each fiscal year to carry out this title, the Secretary shall make available one percent to carry out this section."

Subtitle D—Waiver of Liability for Certain Sale of Facility Under Program of Construction and Modernization of Medical Facilities

SEC. 731. ESTABLISHMENT OF WAIVER AUTHORITY.

(a) **IN GENERAL.**—If, pursuant to subsection (b) of section 732, the Secretary of Health and Human Services makes a certification of compliance with the conditions described in subsection (a) of such section, section 609 of the Public Health Service Act (42 U.S.C. 291i) shall not, with respect to the transferor and transferee described in subsection (b), apply to the sale on November 26, 1986, of the medical facility—

(1) located in Blanding, in the State of Utah;

(2) known, prior to such date, as San Juan County Nursing Home; and

(3) with respect to which funds were received during the years 1967 through 1970 pursuant to title VI of the Public Health Service Act (42 U.S.C. 291 et seq.).

(b) **DESCRIPTION OF PARTIES TO SALE.**—In the sale described in subsection (a), the transferor is San Juan County, a political subdivision of the State of Utah, and the transferee is Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

SEC. 732. CONDITIONS OF WAIVER.

(a) **IN GENERAL.**—The conditions referred to in section 731(a) are that, not later than the expiration of the 12-month period beginning on the date of the enactment of this Act—

(1)(A) San Juan County establish an irrevocable trust with a res of \$321,057 for the sole purpose of satisfying, with respect to the medical facility described in section 731(a), the obligation of San Juan County under regulations issued under clause (2) of section 603(e) of the Public Health Service Act (42 U.S.C. 291c(e));

(B) except to the extent inconsistent with this title, San Juan establish such trust in accordance with regulations issued under section 609(d)(1)(A) of such Act for trusts established pursuant to such section; and

(C) San Juan County agree—

(i) except to the extent inconsistent with this title, to administer such trust in accordance with regulations issued under such section 609(d)(1)(A) of such Act; and

(ii) with respect to the obligation described in subparagraph (A)—

(I) to carry out such obligation at the medical facility known as San Juan County Hospital and located in Monticello, in the State of Utah;

(II) to ensure that uncompensated services provided at any location other than such medical facility will not be reimbursed from the trust established pursuant to subparagraph (A); and

(III) not to seek contribution from Auburn Corporation toward the satisfaction of such obligation; and

(2) Auburn Corporation agree—

(A) to satisfy, with respect to the medical facility described in section 731(a), the obligation of San Juan County under regulations issued under clause (1) of section 603(e) of the Public Health Service Act;

(B) to satisfy such obligation at the medical facility described in section 731(a); and

(C) not to seek contribution from San Juan County toward the satisfaction of such obligation.

(b) DETERMINATION AND CERTIFICATION OF SATISFACTION OF CONDITIONS.—

The Secretary shall make a determination of whether the conditions described in subsection (a) are satisfied by San Juan County and Auburn Corporation within the period described in such subsection. If the Secretary makes a determination that the conditions have been satisfied, the Secretary shall certify to the Congress the fact of such determination.

SEC. 733. MONITORING OF COMPLIANCE WITH AGREEMENTS AND EFFECT OF FAILURE TO COMPLY.

(a) MONITORING.—The Secretary shall determine the extent to which San Juan County and Auburn Corporation are carrying out their respective duties under the agreements made pursuant to the conditions described in section 732(a).

(b) FAILURE TO COMPLY.—

(1) If the conditions described in section 732(a) are not satisfied by San Juan County and Auburn Corporation within the period described in such section, the Secretary shall ensure that proceedings under section 609 of the Public Health Service Act (42 U.S.C. 291i) with respect to the sale described in section 731(a) are commenced or continued against San Juan County or Auburn Corporation, or both, as determined by the Secretary.

(2) If San Juan County or Auburn Corporation fails to carry out its duties under the agreements made pursuant to the conditions described in section 732(a), the Secretary shall ensure that proceedings described in paragraph (1) are commenced or continued against San Juan County or Auburn Corporation, respectively.

SEC. 734. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Auburn Corporation" means Auburn Manor Holding Corporation, a corporation under the laws of the State of California.

(2) The term "San Juan County" means San Juan County, a political subdivision of the State of Utah.

(3) The term "Secretary" means the Secretary of Health and Human Services.

TITLE VIII—REVISION AND EXTENSION OF PROGRAMS OF HEALTH CARE FOR THE HOMELESS

Subtitle A—Categorical Grants for Primary Health Services and Substance Abuse Services

SEC. 801. INCREASE IN REQUIRED AMOUNT OF MATCHING FUNDS AND MODIFICATION IN ELIGIBILITY FOR WAIVER WITH RESPECT TO MATCHING FUNDS.

(a) **INCREASE IN REQUIRED AMOUNT.**—Section 340(e)(1)(A) of the Public Health Service Act (42 U.S.C. 256(e)(1)(A)) is amended—

(1) in clause (i), by striking "under the grant; and" and inserting the following: "for the first fiscal year of payments under the grant and 66 2/3 percent of the costs of providing such services for any subsequent fiscal year of payments under the grant; and"; and

(2) in clause (ii), by striking "Federal funds" and all that follows and inserting the following: "Federal funds provided for the first fiscal year of payments under the grant and not less than \$1 (in cash or in kind under such subparagraph) for each \$2 of Federal funds provided for any subsequent fiscal year of payments under the grant.".

42 USC 256 note.

(b) **EFFECTIVE DATE FOR INCREASE.**—The amendments made by subsection (a) shall take effect October 1, 1989.

(c) **MODIFICATION IN ELIGIBILITY FOR WAIVER.**—Section 340(e)(2) of the Public Health Service Act (42 U.S.C. 256(e)(2)) is amended to read as follows:

"(2) The Secretary may waive the requirement established in paragraph (1)(A) if the applicant involved is a nonprofit private entity and the Secretary determines that it is not feasible for the applicant to comply with such requirement."

SEC. 802. ESTABLISHMENT OF AUTHORITY FOR TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.

(a) **IN GENERAL.**—Section 340 of the Public Health Service Act (42 U.S.C. 256) is amended—

(1) by redesignating subsections (h) through (q) as subsections (i) through (r), respectively; and

(2) by adding after subsection (g) the following new subsection:

"(h) **TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.**—If any grantee under subsection (a) has provided services described in subsection (f) or (g) to a homeless individual, any such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months."

(b) **CONFORMING AMENDMENTS.**—

(1) Section 340(d)(1) of the Public Health Service Act (42 U.S.C. 256(d)(1)) is amended—

(A) in subparagraph (C), by striking “(h)” and inserting “(i)”;

(B) in subparagraph (D), by striking “(i)” and inserting “(j)”;

(C) in subparagraph (E), by striking “(j)” and inserting “(k)”;

(D) in subparagraph (F), by striking “(k)” and inserting “(l)”.

(2) Section 332(a)(3) of the Public Health Service Act (42 U.S.C. 254e(a)(3)) is amended by striking “340(q)(2)” and inserting “340(r)”.

(3) Section 536(1) of the Public Health Service Act (42 U.S.C. 290cc-36(1)) is amended by striking “340(q)(2)” and inserting “340(r)”.

SEC. 803. CLARIFICATION WITH RESPECT TO CERTAIN PROVISIONS.

(a) **DEFINITION OF HOMELESS INDIVIDUAL.**—Section 340(r)(2) of the Public Health Service Act (as redesignated in section 802(a)(1) of this title) is amended by striking “living accommodations.” and inserting “living accommodations and an individual who is a resident in transitional housing.”.

42 USC 256.

(b) **PROVISION OF TECHNICAL ASSISTANCE.**—Section 340(o)(2) of the Public Health Service Act (as redesignated in section 802(a)(1) of this title) is amended by striking “(p)(1),” and inserting “(q)(1) for a fiscal year,”.

SEC. 804. AUTHORIZATION OF APPROPRIATIONS.

Section 340(q)(1) of the Public Health Service Act (as redesignated in section 802(a)(1) of this title) is amended by striking “There are authorized” and all that follows and inserting the following: “There are authorized to be appropriated to carry out this section \$61,200,000 for fiscal year 1989, \$63,600,000 for fiscal year 1990, and \$66,200,000 for fiscal year 1991.”.

42 USC 256.

Subtitle B—Block Grant for Community Mental Health Services

SEC. 811. AUTHORIZATION OF APPROPRIATIONS AND CONTINGENT CONVERSIONS TO CATEGORICAL PROGRAM.

(a) **IN GENERAL.**—Section 535 of the Public Health Service Act (42 U.S.C. 290cc-35) is amended to read as follows:

“FUNDING

“SEC. 535. (a) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this part, there are authorized to be appropriated \$35,000,000 for each of the fiscal years 1989 and 1990 and such sums as may be necessary for fiscal year 1991.

“(b) **EFFECT OF INSUFFICIENT APPROPRIATIONS FOR MINIMUM ALLOTMENTS.**—

“(1) If the amounts made available pursuant to subsection (a) are insufficient for providing each State with an allotment under section 521(a) of not less than \$150,000, the Secretary shall, from such amounts as are made available pursuant to

such subsection, make grants to the States for providing to homeless individuals the mental health services described in section 524.

"(2) Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State."

(b) **FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT.**—Section 529 of the Public Health Service Act (42 U.S.C. 290cc-29) is amended to read as follows:

"CONVERSION TO STATE CATEGORICAL PROGRAM IN EVENT OF FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT

Grants.

"SEC. 529. (a) IN GENERAL.—Subject to subsection (c), the Secretary shall, from amounts described in subsection (b), make grants to public and nonprofit private entities for the purpose of providing to homeless individuals the mental health services described in section 524.

"(b) DESCRIPTION OF FUNDS.—The amounts referred to in subsection (a) are any amounts made available in appropriations Acts for allotments under section 521(a) that are not allotted under such section to a State as a result of—

"(1) the failure of the State to submit an application under section 522;

"(2) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

"(3) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

"(c) REQUIREMENT OF PROVISION OF SERVICES IN CERTAIN STATES.—With respect to grants under subsection (a), amounts made available pursuant to subsection (b) as a result of the State involved shall be available only for grants to provide services in such State."

SEC. 812. ELIGIBILITY OF TERRITORIES.

(a) **DEFINITION OF STATE.**—Section 536(3) of the Public Health Service Act (42 U.S.C. 290cc-36(3)) is amended by striking "Columbia," and all that follows and inserting the following: "Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands."

(b) **MINIMUM ALLOTMENT.**—Section 528(a)(1) of the Public Health Service Act (42 U.S.C. 290cc-28(a)(1)) is amended to read as follows:

"(1) \$275,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico and \$50,000 for each of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and"

SEC. 813. TECHNICAL AND CONFORMING AMENDMENTS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended—

42 USC 290cc-2.

(1) in section 521(a), by amending the first sentence to read as follows: "The Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 528.";

42 USC 290dd.

(2) in section 541(a)(4), by striking "522" and inserting "543";

42 USC 290ee.

(3) in section 545(d), by striking "526" and inserting "547"; and

(4) in section 546(a)(4), by striking “521” and inserting “542”. 42 USC 290ee-1.

Subtitle C—Authorization of Appropriations for Community Demonstration Projects

SEC. 821. MENTAL HEALTH SERVICES FOR HOMELESS INDIVIDUALS WITH CHRONIC MENTAL ILLNESS.

The first sentence of section 612(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 290aa-3 note) is amended to read as follows: “For payments pursuant to section 504(f) of the Public Health Service Act, there are authorized to be appropriated \$11,000,000 for fiscal year 1989, \$11,500,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991, in addition to any other amounts authorized to be appropriated for such payments for each of such fiscal years.”.

SEC. 822. ALCOHOL AND DRUG ABUSE TREATMENT OF HOMELESS INDIVIDUALS.

Section 513(b) of the Public Health Service Act (42 U.S.C. 290bb-2(b)) is amended to read as follows:

“(b) There are authorized to be appropriated to carry out section 512(c) \$14,000,000 for fiscal year 1989, \$17,000,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991.”.

Subtitle D—General Provisions

SEC. 831. EFFECTIVE DATES.

42 USC 256 note.

The amendments made by subsection (a) of section 801 shall take effect in accordance with subsection (b) of such section. The amendments otherwise made by this title shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

TITLE IX—TESTING OF CONVICTED FELONS

Prison Testing
Act of 1988.
AIDS.

SEC. 901. SHORT TITLE.

This title may be cited as the “Prison Testing Act of 1988”.

42 USC 300ee-6
note.

SEC. 902. TESTING OF STATE PRISONERS.

42 USC 300ee-6.

(a) **IN GENERAL.**—To be eligible to receive funds under this section, the chief law enforcement officer of each State shall establish a State program to provide for the confidential testing of any individual convicted under State law, of an intravenous drug or sex offense on or after the date of enactment of this title.

State and local
governments.
Drugs and drug
abuse.

(b) **CONFIDENTIALITY.**—

(1) **IN GENERAL.**—Except as otherwise provided, no person receiving identifying information regarding an individual tested pursuant to this section shall disclose or redisclose such information to any person.

(2) **WAIVER.**—The confidentiality of the testing required under subsection (a) shall be waived only so that—

(A) correctional personnel, as considered necessary under laws of the State or policies established by the State department of health, may have access to the information; and
 (B) victims of rape may be informed of the result of the test, if the person convicted of the rape tests positive for exposure to the human immunodeficiency virus.

(c) **MEDICAL TREATMENT OF DRUG AND SEX OFFENDERS.**—The chief law enforcement officer of each State receiving funds under this section shall provide education and counseling through existing prison medical facilities to any individual tested for exposure to the human immunodeficiency virus established under subsection (a).

(d) **FUNDING.**—

(1) **IN GENERAL.**—The program established under subsection (a) shall be conducted in part using funds made available under this section.

(2) **REQUIREMENT.**—A State shall not receive funds under this section unless an application for such has been submitted to, and approved by, the Attorney General.

(3) **CONTENTS.**—An application submitted under paragraph (1) shall—

(A) be in such form and be submitted in such manner as the Attorney General may by regulation require; and

(B) contain—

(i) assurances by the chief executive officer of the State will provide, through existing medical facilities in State penal institutions, education and pre- and post-test counseling to any individual tested for exposure to the human immunodeficiency virus under this section;

(ii) a 50 percent cost share under subsection (a) by the State; and

(iii) such other information as the Attorney General may by regulation specify.

(e) **DEFINITIONS.**—As used in this section, the term “intravenous drug or sex offense” means—

(1) an offense that is punishable, under a State law relating to intravenous use of a controlled substance (other than a law relating to simple possession of a controlled substance), by imprisonment for a term exceeding one year;

(2) a State offense of the same type described under chapter 99 of title 18, United States Code, relating to rape; or

(3) a State criminal offense involving prostitution.

(f) **REGULATIONS.**—The Attorney General shall promulgate regulations to carry out this section, including regulations that determine the amount of funds that each State is entitled to receive under this section.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1988 through 1990.

SEC. 903. STUDY BY ATTORNEY GENERAL

Not later than 1 year after the date of enactment of this title, the Attorney General of the United States shall complete a study and submit a report to the appropriate Committees of Congress concerning the appropriateness or inappropriateness of mandated prison sentences for any individual convicted of an intravenous drug or sex

offense who thereafter knowingly places others at risk of becoming infected with the human immunodeficiency virus.

SEC. 904. EFFECTIVE DATE.

42 USC 300ee-6
note.

This title shall become effective 180 days after the date of enactment of this Act.

Approved November 4, 1988.

LEGISLATIVE HISTORY—S. 2889:

CONGRESSIONAL RECORD, Vol. 134 (1988):
Oct. 13, considered and passed Senate and House.

Public Law 100-608
100th Congress

An Act

Nov. 5, 1988

[H.R. 1473]

To designate the building which will house the United States District Court for the Eastern District of Texas in Lufkin, Texas, as the "Ward R. Burke United States Courthouse".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BUILDING.

The building which will house the United States District Court for the Eastern District of Texas at Third Street and Lufkin Avenue in Lufkin, Texas, shall be known and designated as the "Ward R. Burke United States Courthouse".

SEC. 2. LEGAL REFERENCES.

Any reference in a law, map, regulation, document, record, or other paper of the United States to the building referred to in section 1 shall be deemed to be a reference to the "Ward R. Burke United States Courthouse".

Approved November 5, 1988.

LEGISLATIVE HISTORY—H.R. 1473:

HOUSE REPORTS: No. 100-133 (Comm. on Public Works and Transportation).
CONGRESSIONAL RECORD:

Vol. 133 (1987): June 15, considered and passed House.

Vol. 134 (1988): Oct. 21, considered and passed Senate.

Public Law 100-609
100th Congress

An Act

Granting the consent and approval of Congress to the addition of the State of Ohio as a party to the Middle Atlantic Interstate Forest Fire Protection Compact.

Nov. 5, 1988

[H.R. 2756]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ADDITION OF OHIO TO THE MIDDLE ATLANTIC INTERSTATE FOREST FIRE
PROTECTION COMPACT

The Act entitled “An Act granting the consent and approval of Congress to the Middle Atlantic Interstate Forest Fire Protection Compact”, approved July 25, 1956 (70 Stat. 636), is amended—

(1) by redesignating section 2 as section 3; and

(2) by inserting after the first section the following new section:

“SEC. 2. The consent and approval of Congress is hereby given to the addition of the State of Ohio as a party to the Middle Atlantic Interstate Forest Fire Protection Compact. For the purposes of this section, Article II of such Compact shall be deemed to include the State of Ohio.”.

Approved November 5, 1988.

LEGISLATIVE HISTORY—H.R. 2756:

HOUSE REPORTS: No. 100-613 (Comm. on Agriculture).
CONGRESSIONAL RECORD, Vol. 134 (1988):

May 10, considered and passed House.

Oct. 21, considered and passed Senate.

Public Law 100-610
100th Congress

An Act

Nov. 5, 1988
[H.R. 4517]

To amend title III of the Outer Continental Shelf Lands Act Amendments of 1978 to provide for indemnification and hold harmless agreements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SECTION 1. SHORT TITLE.

This Act may be cited as the “Outer Continental Shelf Operations Indemnification Clarification Act of 1988”.

SEC. 2. INDEMNITY AGREEMENTS.

Section 305 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1802 et seq.) is amended by adding at the end the following new subsection:

“(e) Any owner or operator of an offshore facility may enter into an indemnity, hold harmless, or similar agreement with any person holding a lease on the Outer Continental Shelf with respect to any liability arising under this title. Notwithstanding the provision of this subsection, any such indemnity, hold harmless, or similar agreement shall not relieve such owner, operator, or person from liability arising under this title. Nothing in this subsection shall be construed to alter or in any way affect the financial responsibility requirements imposed under this section.”.

SEC. 3. GUARANTOR'S LIABILITY.

Section 305 of the Outer Continental Shelf Lands Act Amendments of 1978 is amended by redesignating subsection (c) as (c)(1) and adding a new subsection (c)(2) to read as follows:

“(2) The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability. Nothing in this subsection shall be construed, interpreted or applied to diminish the liability of any person under this Act or other applicable law.”.

**TITLE II—PETTAQUAMSCUTT COVE
NATIONAL WILDLIFE REFUGE**

SEC. 201. FINDINGS.

The Congress finds that—

(1) Pettaquamscutt Cove, and the associated tidal marshes and mudflats, and dividing the towns of Narragansett and South Kingstown, Rhode Island, has been identified as the most important black duck migration and wintering habitat in

Outer
Continental
Shelf Operations
Indemnification
Clarification Act
of 1988.
43 USC 1801
note.

43 USC 1815.

Birds.
Conservation.
Fish and fishing.
Research and
development.
16 USC 668dd
note.

Rhode Island, in accordance with the objectives of the North American Waterfowl Plan;

(2) Pettaquamscutt Cove provides important migration and wintering habitat for various other species of waterfowl, valuable feeding habitat for shorebirds, terns, gulls, and wading birds, and habitat for many species of finfish and shellfish;

(3) Pettaquamscutt Cove is home to several State-listed Rare and Uncommon animal and plant species; and

(4) designation of this area as a National Wildlife Refuge would significantly aid in the conservation of these fish and wildlife resources.

SEC. 202. PURPOSES.

The purposes for which the Pettaquamscutt Cove National Wildlife Refuge is established and shall be managed include—

(1) to protect and enhance the populations of black ducks and other waterfowl, geese, shorebirds, terns, wading birds, and other wildlife using the refuge;

(2) to provide for the conservation and management of fish and wildlife within the refuge;

(3) to fulfill the international treaty obligations of the United States respecting fish and wildlife; and

(4) to provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation.

SEC. 203. DEFINITIONS.

For the purposes of this Act—

(1) the term “refuge” means the Pettaquamscutt Cove National Wildlife Refuge;

(2) the term “Secretary” means the Secretary of the Interior; and

(3) the term “selection area” means the lands and waters of the Pettaquamscutt Watershed in the State of Rhode Island.

SEC. 204. ESTABLISHMENT OF REFUGE.

(a)(1) Within one year after the effective date of this Act the Secretary shall designate approximately 600 acres of land and waters within the selection area which the Secretary considers appropriate for the refuge.

(2) After making such designation, the Secretary shall publish in the Federal Register, and in newspapers of local circulation, a notice of availability of a detailed map depicting the boundaries of the land so designated, which map shall be on file and available for inspection in the office of the Director of the United States Fish and Wildlife Service, Department of the Interior, and in appropriate offices of the United States Fish and Wildlife Service in the State of Rhode Island.

Federal
Register,
publication.

(b) BOUNDARY REVISIONS.—The Secretary may make such minor revisions in the boundaries designated under this section as may be appropriate to carry out the purpose of this Act or to facilitate the acquisition of property within the refuge.

(c) ACQUISITION.—After determination of the boundaries of the refuge in accordance with the provisions of subsection (a) of this section, the Secretary is authorized to acquire the lands and waters, or interests therein, within the boundary of the refuge.

(d) ESTABLISHMENT.—The Secretary shall establish the National Wildlife Refuge, by publication of a notice to that effect in the

Federal
Register,
publication.

Federal Register and publications of local circulation, whenever sufficient property has been acquired within the boundary of the refuge to constitute an area that can be effectively managed as a National Wildlife Refuge.

SEC. 205. ADMINISTRATION.

The Secretary shall administer all lands, waters, and interests therein acquired under this Act in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1968 (16 U.S.C. 668dd-668ee). The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of recreation opportunities, and interpretive education, as he deems appropriate to carry out the purposes of this Act.

SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of the Interior—

- (a) such funds as may be necessary for the acquisition of lands and waters designated in section 4(a)(1); and
- (b) such funds as may be necessary for the development, operation and maintenance of the refuge.

SEC. 207. EFFECTIVE DATE.

This Act shall take effect on the date of its enactment.

Approved November 5, 1988.

LEGISLATIVE HISTORY—H.R. 4517:

HOUSE REPORTS: No. 100-710 (Comm. on Merchant Marine and Fisheries).
 CONGRESSIONAL RECORD, Vol. 134 (1988):
 June 20, considered and passed House.
 Oct. 14, considered and passed Senate, amended.
 Oct. 19, House concurred in Senate amendment.

Public Law 100-611
100th Congress

An Act

To amend title 5, United States Code, with respect to certain programs under which awards may be made to Federal employees for superior accomplishments or cost savings disclosures, and for other purposes.

Nov. 5, 1988

[H.R. 4574]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. EXPIRATION DATE OF PROGRAM.

(a) Section 4514 of title 5, United States Code, is amended to read as follows:

“§ 4514. Expiration of authority

“No award may be made under this subchapter after September 30, 1990.”.

(b) The table of sections for chapter 45 of title 5, United States Code, is amended by amending the item relating to section 4514 to read as follows:

“4514. Expiration of authority.”.

Approved November 5, 1988.

LEGISLATIVE HISTORY—H.R. 4574:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed House.

Oct. 19, considered and passed Senate, amended.

Oct. 20, House concurred in Senate amendment.

Public Law 100-612
100th Congress

An Act

Nov. 5, 1988

[H.R. 5104]

Federal
Property
Management
Improvement
Act of 1988.
40 USC 471 note.

To improve the efficiency and effectiveness of the management and disposal of Federal real and personal property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Federal Property Management Improvement Act of 1988".

SEC. 2. Section 201(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(c)) is amended by adding at the end thereof the following new sentence: "Sales of property pursuant to this subsection shall be governed by section 3709 of the Revised Statutes (41 U.S.C. 5), except that fixed price sales may be conducted in the same manner and subject to the same conditions as are applicable to the sale of property pursuant to section 203(e)(5) of this Act."

SEC. 3. Section 203(e)(5) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(5)) is amended—

(1) by inserting "(A)" after "(5)"; and

(2) by adding at the end thereof the following:

"(B) Under regulations and restrictions to be prescribed by the Administrator, property to be sold pursuant to this paragraph may be offered to organizations specified in paragraph (3)(H) of this subsection that have expressed an interest in the property to permit such an organization a prior opportunity to purchase at the prices fixed for such property."

SEC. 4. (a) Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(6)) is amended to read as follows:

"(6)(A) Except as otherwise provided by subparagraph (C) of this paragraph, an explanatory statement shall be prepared of the circumstances of each disposal by negotiation of—

"(i) any personal property which has an estimated fair market value in excess of \$15,000;

"(ii) any real property that has an estimated fair market value in excess of \$100,000, except that any real property disposed of by lease or exchange shall only be subject to clauses (iii) through (v) of this subparagraph;

"(iii) any real property disposed of by lease for a term of 5 years or less, if the estimated fair annual rent is in excess of \$100,000 for any of such years;

"(iv) any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of \$100,000; or

"(v) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

"(B) Each such statement shall be transmitted to the appropriate committees of the Congress in advance of such disposal, and a copy

thereof shall be preserved in the files of the executive agency making such disposal.

“(C) No such statement need be transmitted to any such committee with respect to any disposal of personal property made under paragraph (5) at a fixed price, or to property disposals authorized by any other provision of law to be made without advertising.

“(D) The annual report of the Administrator under section 212 shall contain or be accompanied by a listing and description of any negotiated disposals of surplus property having an estimated fair market value of more than \$15,000, in the case of real property, or \$5,000, in the case of any other property, other than disposals for which an explanatory statement has been transmitted under this paragraph.”.

(b) Section 203(e)(3)(E) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(3)(E)) is amended by striking out “\$1,000” and inserting “\$15,000”.

SEC. 5. Section 203(o) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(o)) is amended to read as follows:

“(o)(1) With respect to real and related personal property transferred or conveyed under subsection (p) of this section and real property disposed of under subsection (k) of this section and section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)), the head of each executive agency disposing of such property shall submit during the calendar quarter following the close of each fiscal year a report to the Congress and to the Administrator showing the acquisition cost and the sale or lease value of all real and related personal property so disposed of during the preceding fiscal year. Such reports shall also show transfers or conveyances of property according to State, and may include such other information and recommendations as the Administrator or other executive agency head concerned deems appropriate.

Reports.

“(2) Six months after the end of the first full fiscal year after the date of enactment of this paragraph, and biennially thereafter, the Administrator shall transmit a report to the Congress that covers the initial period from such effective date and each succeeding biennial period and contains—

“(A) a full and independent evaluation of the operation of programs for the donation of Federal surplus personal property,

“(B) statistical information on the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations and surplus personal property approved for donation to the State Agencies for Surplus Property and donated to eligible non-Federal organizations during each succeeding biennial period, and

“(C) such recommendations as the Administrator determines to be necessary or desirable.

“(3) A copy of each report made under paragraph (2) shall also be simultaneously furnished to the Comptroller General of the United States. The Comptroller General shall review and evaluate the report and make any comments and recommendations to the Congress thereon, as he deems necessary or desirable.”.

SEC. 6. Section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b)) is amended—

(1) by striking out “Bureau of the Budget” each place it appears and inserting “Office of Management and Budget”;

(2) by inserting “for costs of environmental and historic preservation services,” after “realty brokers,” in the second sentence.

SEC. 7. Section 207(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 488(c)) is amended to read as follows:

“(c) This section shall not apply to the disposal of—

“(1) real property, if the estimated fair market value is less than \$3,000,000; or

“(2) personal property (other than a patent, process, technique, or invention), if the estimated fair market value is less than \$3,000,000.”.

SEC. 8. Section 10 of Public Law 94-519 (40 U.S.C. 493, 90 Stat. 2457) is repealed.

Approved November 5, 1988.

LEGISLATIVE HISTORY—H.R. 5104:

HOUSE REPORTS: No. 100-897 (Comm. on Government Operations).
CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 13, considered and passed House.

Oct. 20, considered and passed Senate.

Public Law 100-613
100th Congress

An Act

To provide that the Consumer Product Safety Commission amend its regulations regarding lawn darts.

Nov. 5, 1988

[H.R. 5552]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, not later than 60 days after the date of enactment of this Act, the Consumer Product Safety Commission shall amend its regulations to revoke exemption regarding lawn darts and other similar sharp-pointed toys contained in section 1500.86(a)(3) of title 16, Code of Federal Regulations, unless the Commission finds that such products do not have the potential for causing puncture wound injury.

Approved November 5, 1988.

LEGISLATIVE HISTORY—H.R. 5552:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 20, considered in House.

Oct. 21, considered and passed House and Senate.

Public Law 100-614
100th Congress

Joint Resolution

Nov. 5, 1988

[H.J. Res. 438]

Designating November 4, 1988, as "National Teacher Appreciation Day".

Whereas education of the Nation's youth is the foundation of the Nation's future;

Whereas education is a lifelong process which is beneficial to the individual and thus beneficial to the entire Nation;

Whereas teachers deserve credit for their invaluable role in providing education;

Whereas teaching not only involves traditional areas of education, but today also includes vocational education, continuing education, and education for special needs;

Whereas teachers contribute not only to the academic growth of students, but also to their ethical, social, and emotional development;

Whereas Sharon Christa McAuliffe, a high school history teacher, exemplified the attributes of the Nation's teachers and made a unique contribution to the teaching profession through her participation in the space shuttle program which, tragically, resulted in her death;

Whereas a student's respect for his or her teacher is essential to the student's ability to learn; and

Whereas the contributions of teachers should be celebrated often in order to honor the role of teachers in society and to affirm and foster respect for teachers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 4, 1988, is designated as "National Teacher Appreciation Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate programs, ceremonies, and activities.

Approved November 5, 1988.

LEGISLATIVE HISTORY—H.J. Res. 438:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 21, considered and passed House and Senate.

Public Law 100-615
100th Congress

An Act

To amend the National Energy Conservation Policy Act with respect to the energy policy of the United States.

Nov. 5, 1988

[S. 1382]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Energy Management Improvement Act of 1988".

Federal Energy
Management
Improvement
Act of 1988.
42 USC 8201
note.

SEC. 2. FEDERAL ENERGY MANAGEMENT IMPROVEMENTS.

(a) IN GENERAL.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251-8261) is amended to read as follows:

"PART 3—FEDERAL ENERGY MANAGEMENT

"SEC. 541. FINDINGS.

"The Congress finds that—

"(1) the Federal Government is the largest single energy consumer in the Nation;

"(2) the cost of meeting the Federal Government's energy requirement is substantial;

"(3) there are significant opportunities in the Federal Government to conserve and make more efficient use of energy through improved operations and maintenance, the use of new energy efficient technologies, and the application and achievement of energy efficient design and construction;

"(4) Federal energy conservation measures can be financed at little or no cost to the Federal Government by using private investment capital made available through contracts authorized by title VIII of this Act; and

"(5) an increase in energy efficiency by the Federal Government would benefit the Nation by reducing the cost of government, reducing national dependence on foreign energy resources, and demonstrating the benefits of greater energy efficiency to the Nation.

"SEC. 542. PURPOSE.

"It is the purpose of this part to promote the conservation and the efficient use of energy by the Federal Government.

"SEC. 543. ENERGY MANAGEMENT GOALS.

"(a) ENERGY PERFORMANCE GOAL FOR FEDERAL BUILDINGS.—(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, its Federal buildings so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross

square foot of its Federal buildings in use during the fiscal year 1985.

"(2) An agency may exclude from the requirements of paragraph (1) any building, and the associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 548(a) the buildings designated by it for such exclusion.

"(b) IMPLEMENTATION STEPS.—To achieve the goal established in subsection (a), each agency shall—

"(1) prepare or update, within 6 months after the date of the enactment of the Federal Energy Management Improvement Act of 1988, a plan describing how the agency intends to meet such goal, including how it will implement this part, designate personnel primarily responsible for achieving such goal, and identify high priority projects;

"(2) perform energy surveys of its Federal buildings to the extent necessary;

"(3) using such surveys, apply energy conservation measures in a manner which will attain the goal established in subsection (a) in the most cost-effective manner practicable; and

"(4) ensure that the operation and maintenance procedures applied under this section are continued.

Public buildings
and grounds.

"SEC. 544. ESTABLISHMENT AND USE OF LIFE CYCLE COST METHODS AND PROCEDURES.

"(a) ESTABLISHMENT OF LIFE CYCLE COST METHODS AND PROCEDURES.—The Secretary, in consultation with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the National Bureau of Standards, and the Administrator of the General Services Administration, shall—

"(1) establish practical and effective present value methods for estimating and comparing life cycle costs for Federal buildings, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of such system or during a period of 25 years, whichever is shorter, and using average fuel costs and a discount rate determined by the Secretary; and

"(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established.

"(b) USE OF LIFE CYCLE COST METHODS AND PROCEDURES.—(1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, shall be made using life cycle cost methods and procedures established under subsection (a).

"(2) In leasing buildings for its own use or that of another agency, each agency shall give appropriate preference to buildings which minimize life cycle costs.

"(c) USE IN NON-FEDERAL STRUCTURES.—The Secretary shall make available information to the public on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy.

Public
information.

"SEC. 545. BUDGET TREATMENT FOR ENERGY CONSERVATION MEASURES.

"Each agency, in support of the President's annual budget request to the Congress, shall specifically set forth and identify funds requested for energy conservation measures.

"SEC. 546. INCENTIVES FOR AGENCIES.

Contracts.

"(a) IN GENERAL.—Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under title VIII of this Act.

"(b) IMPLEMENTATION.—The head of each agency shall, no later than 120 days after the date of the enactment of the Federal Energy Management Improvement Act of 1988, implement procedures for entering into such contracts and for identifying, verifying, and utilizing, on a fiscal year basis, the cost savings resulting from such contracts.

"(c) USE OF SAVINGS.—The portion of the funds appropriated to an agency for energy expenses for a fiscal year that is equal to the amount of cost savings realized by such agency for such year from contracts entered into under title VIII shall remain available for obligation, without further appropriation, to undertake additional energy conservation measures.

"SEC. 547. INTERAGENCY ENERGY MANAGEMENT TASK FORCE.

"(a) IN GENERAL.—To assist the interagency committee organized under section 656 of the Department of Energy Organization Act (42 U.S.C. 7266) to coordinate the activities of the Federal Government in promoting energy conservation and the efficient use of energy and in informing non-Federal entities of the Federal experience in energy conservation, the Secretary shall establish an Interagency Energy Management Task Force (hereafter in this section referred to as the 'Task Force').

"(b) MEMBERS.—The Task Force shall be composed of the chief energy managers of agencies represented on the interagency committee organized under section 656 of the Department of Energy Organization Act.

"(c) DUTIES.—The Task Force shall meet when the Secretary requests, but not less often than twice a year, to—

"(1) assess the progress of the various agencies in achieving energy savings;

"(2) collect and disseminate information to agencies, States, local governments, and the public on effective survey techniques, innovative approaches to the efficient use of energy, incentive programs developed under section 546, innovative contracting methods developed under title VIII of this Act, the use of cogeneration facilities and renewable resources, and other technologies that promote the conservation and efficient use of energy;

State and local governments.
Public information.

"(3) coordinate energy surveys conducted by the agencies;

"(4) develop options for use in conserving energy;

"(5) report to the committee organized under section 656 of the Department of Energy Organization Act; and

Reports.

"(6) review, from time to time as may be necessary, the regulations relating to building temperature settings to determine whether changes in such regulations would be appropriate to assist in meeting the goals specified in section 543.

"SEC. 548. REPORTS.

"(a) REPORTS TO THE SECRETARY.—Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

"(1) the agency's progress in achieving the goals established by section 543; and

"(2) the procedures being used by the agency pursuant to section 546(b), the number of contracts entered into by such agency under title VIII of this Act, the energy and cost savings that have resulted from such contracts, the use of such cost savings under section 546(c), and any problem encountered in entering into such contracts and otherwise implementing section 546.

"(b) **REPORTS TO CONGRESS.**—The Secretary shall report annually, with respect to each fiscal year beginning after the date of the enactment of this subsection, to the Congress—

"(1) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including a copy of the list of the exclusions made under section 543(a)(2);

"(2) the number of contracts entered into by all agencies under title VIII of this Act, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties; and

"(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy.

"SEC. 549. DEFINITIONS.

"For the purposes of this part—

"(1) the term 'agency' has the meaning given it in section 551(1) of title 5, United States Code;

"(2) the term 'construction' means new construction or substantial rehabilitation of existing structures;

"(3) the term 'cogeneration facilities' has the same meaning given such term in section 3(18)(A) of the Federal Power Act (16 U.S.C. 796(18)(A));

"(4) the term 'energy conservation measures' means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, or retrofit activities;

"(5) the term 'energy survey' means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

"(6) the term 'Federal building' means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection;

"(7) the term 'life cycle cost' means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in

the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease;

"(8) the term 'renewable energy sources' includes, but is not limited to, sources such as agriculture and urban waste, geothermal energy, solar energy, and wind energy; and

"(9) the term 'Secretary' means the Secretary of Energy."

(b) **CONFORMING AMENDMENT.**—Section 381(c) of the Energy Policy and Conservation Act (42 U.S.C. 6361(c)) is amended to read as follows:

"(c) The Secretary shall include in the report required under section 548(b) of the National Energy Conservation Policy Act the steps taken under subsections (a) and (b) of this section."

(c) **TECHNICAL AMENDMENT.**—Part 3 of title V of the table of contents of the National Energy Conservation Policy Act is amended to read as follows:

"PART 3—FEDERAL ENERGY MANAGEMENT

"Sec. 541. Findings.

"Sec. 542. Purpose.

"Sec. 543. Energy management goals.

"Sec. 544. Establishment and use of life cycle cost methods and procedures.

"Sec. 545. Budget treatment for energy conservation measures.

"Sec. 546. Incentives for agencies.

"Sec. 547. Interagency Energy Management Task Force.

"Sec. 548. Reports.

"Sec. 549. Definitions."

SEC. 3. SURVEY OF ENERGY SAVING POTENTIAL.

(a) **IN GENERAL.**—The Secretary of Energy shall, using funds appropriated to carry out this section, carry out an energy survey, as defined in section 549(5) of the National Energy Conservation Policy Act, for the purposes of—

(1) determining the maximum potential cost effective energy savings that may be achieved in a representative sample of buildings owned or leased by the Federal Government in different areas of the country; and

(2) making recommendations for cost effective energy efficiency and renewable energy improvements in those buildings and in other similar Federal buildings.

(b) **IMPLEMENTATION.**—(1) The Secretary shall transmit to the Congress, within 180 days after the date on which funds are appropriated to carry out this section, a plan for implementing this section.

(2) The Secretary shall designate buildings to be surveyed in the project so as to obtain a sample of buildings of the types and in the climates that is representative of the buildings owned or leased by Federal agencies in the United States that consume the major portion of the energy consumed in Federal buildings.

(3) For purposes of this section, an improvement shall be considered cost effective if the cost of the energy saved or displaced by the improvement exceeds the cost of the improvement over the remaining life of a Federal building or the remaining term of a lease of a building leased by the Federal Government as determined by the life cycle costing methodology developed under section 544 of the National Energy Conservation Policy Act.

(c) **PERSONNEL.**—(1) In carrying out this section, the Secretary shall utilize personnel who are—

(A) employees of the Department of Energy; or

Public buildings
and grounds.
42 USC 8253
note.

(B) selected by the agencies utilizing the buildings which are being surveyed under this section.

(2) Such personnel shall be detailed for the purpose of carrying out this section without any reduction of salary or benefits.

(d) **REPORT.**—As soon as practicable after the completion of the project carried out under this section, the Secretary shall transmit a report of the findings and conclusions of the project to the Congress and to the agencies who own the buildings involved in such project.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$250,000 to carry out this section.

15 USC 5001.

SEC. 4. PENALTIES FOR ENTERING INTO COMMERCE OF IMITATION FIRE-ARMS.

(a) It shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce, as provided in subsection (b).

(b)(1) Except as provided in paragraph (2) or (3), each toy, look-alike, or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm. Such plug shall be recessed no more than 6 millimeters from the muzzle end of the barrel of such firearm.

(2) The Secretary of Commerce may provide for an alternate marking or device for any toy, look-alike, or imitation firearm not capable of being marked as provided in paragraph (1) and may waive the requirement of any such marking or device for any toy, look-alike, or imitation firearm that will only be used in the theatrical, movie or television industry.

(3) The Secretary is authorized to make adjustments and changes in the marking system provided for by this section, after consulting with interested persons.

(c) For purposes of this section, the term "look-alike firearm" means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. Such term does not include any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

(d) The Director of the Bureau of Justice Statistics is authorized and directed to conduct a study of the criminal misuse of toy, look-alike and imitation firearms, including studying police reports of such incidences and shall report on such incidences relative to marked and unmarked firearms.

(e) The Director of National Institute of Justice is authorized and directed to conduct a technical evaluation of the marking systems provided for in subsection (b) to determine their effectiveness in police combat situations. The Director shall begin the study within 3 months after the date of enactment of this section and such study shall be completed within 9 months after such date of enactment.

(f) This section shall become effective on the date 6 months after the date of its enactment and shall apply to toy, look-alike, and imitation firearms manufactured or entered into commerce after such date of enactment.

Reports.

Effective date.

(g) The provisions of this section shall supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no State shall—

State and local governments.

(i) prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or

(ii) prohibit the sale (other than prohibiting the sale to minors) of traditional B-B, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S. 1382 (H.R. 4065):

HOUSE REPORTS: No. 100-684 accompanying H.R. 4065 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 100-256 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Dec. 18, considered and passed Senate.

Vol. 134 (1988): June 27, 28, H.R. 4065 considered and passed House.

June 29, S. 1382 considered and passed House, amended.

Oct. 11, Senate concurred in House amendments with an amendment.

Oct. 12, House concurred in Senate amendment.

Public Law 100-616
100th Congress

An Act

Nov. 5, 1988

[S. 1991]

Entitled "Uranium Mill Tailings Remedial Action Amendments Act of 1988".

Uranium Mill
Tailings
Remedial Action
Amendments
Act of 1988.
42 USC 7901
note.Public lands.
State listing.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uranium Mill Tailings Remedial Action Amendments Act of 1988".

SEC. 2. Section 106 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7916) ("UMTRCA") is amended by striking paragraph (2) and all that follows and inserting in their place:

"(2) the Secretary of the Interior may transfer permanently to the Secretary to carry out the purposes of this Act, public lands under the jurisdiction of the Bureau of Land Management in the vicinity of processing sites in the following counties:

"(A) Apache County in the State of Arizona;

"(B) Mesa, Gunnison, Moffat, Montrose, Garfield, and San Miguel Counties in the State of Colorado;

"(C) Boise County in the State of Idaho;

"(D) Billings and Bowman Counties in the State of North Dakota;

"(E) Grand and San Juan Counties in the State of Utah;

"(F) Converse and Fremont Counties in the State of Wyoming; and

"(G) Any other county in the vicinity of a processing site, if no site in the county in which a processing site is located is suitable.

Any permanent transfer of lands under the jurisdiction of the Bureau of Land Management by the Secretary of the Interior to the Secretary shall not take place until the Secretary complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) with respect to the selection of a site for the permanent disposition and stabilization of residual radioactive materials. Section 204 of the Federal Land Policy and Management Act (43 U.S.C. 1714) shall not apply to this transfer of jurisdiction. Prior to acquisition of land under paragraph (1) or (2) of this subsection in any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this title or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this Act without the concurrence of the chief administrative officer of such agency."

SEC. 3. Section 112(a) of UMTRCA (42 U.S.C. 7922(a)) is amended
read as follows:

“(a) The authority of the Secretary to perform remedial action Water.
under this title shall terminate on September 30, 1994, except that
the authority of the Secretary to perform groundwater restoration
activities under this title is without limitation.”.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S. 1991:

SENATE REPORTS: No. 100-543 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 12, considered and passed Senate.

Oct. 19, considered and passed House.

Public Law 100-617
100th Congress

An Act

Nov. 5, 1988

[S. 2201]

To extend for an additional 8-year period certain provisions of title 17, United States Code, relating to the rental of sound recordings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF RECORD RENTAL AMENDMENT.

Section 4(c) of the Record Rental Amendment of 1984 (17 U.S.C. 109 note) is amended by striking out “five” and inserting in lieu thereof “13”.

SEC. 2. TECHNICAL AMENDMENTS.

Section 109(d) of title 17, United States Code, is amended—

- (1) by striking out “(b)” and inserting in lieu thereof “(c)”; and
- (2) by striking out “coyright” and inserting in lieu thereof “copyright”.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S. 2201 (See H.R. 4310):

HOUSE REPORTS: No. 100-776 accompanying H.R. 4310 (Comm. on the Judiciary).

SENATE REPORTS: No. 100-361 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

June 7, considered and passed Senate.

Aug. 1, H.R. 4310 considered and passed House.

Sept. 26, S. 2201 considered and passed House, amended.

Oct. 21, Senate concurred in House amendment.

Public Law 100-618
100th Congress

An Act

To amend title 18, United States Code, to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audio visual materials.

Nov. 5, 1988

[S. 2361]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Video Privacy Protection Act of 1988".

Video Privacy
Protection Act of
1988.

18 USC 2710
note.

SEC. 2. CHAPTER 121 AMENDMENT.

(a) IN GENERAL.—Chapter 121 of title 18, United States Code, is amended—

(1) by redesignating section 2710 as section 2711; and

(2) by inserting after section 2709 the following:

“§ 2710. Wrongful disclosure of video tape rental or sale records

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘consumer’ means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

“(2) the term ‘ordinary course of business’ means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

“(3) the term ‘personally identifiable information’ includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

“(4) the term ‘video tape service provider’ means any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

“(b) VIDEO TAPE RENTAL AND SALE RECORDS.—(1) A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

Business and
industry.

“(2) A video tape service provider may disclose personally identifiable information concerning any consumer—

“(A) to the consumer;

“(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

“(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, a grand jury subpoena, or a court order;

“(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

“(i) the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

“(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

“(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

“(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

“(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

“(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

Courts, U.S.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

“(3) Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

State and local governments.

“(c) CIVIL ACTION.—(1) Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

“(2) The court may award—

“(A) actual damages but not less than liquidated damages in an amount of \$2,500;

“(B) punitive damages;

“(C) reasonable attorneys’ fees and other litigation costs reasonably incurred; and

“(D) such other preliminary and equitable relief as the court determines to be appropriate.

“(3) No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

“(4) No liability shall result from lawful disclosure permitted by this section.

“(d) PERSONALLY IDENTIFIABLE INFORMATION.—Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee,

or other authority of the United States, a State, or a political subdivision of a State.

“(e) **DESTRUCTION OF OLD RECORDS.**—A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (b)(2) or (c)(2) or pursuant to a court order.

“(f) **PREEMPTION.**—The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section.”

State and local governments.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 121 of title 18, United States Code, is amended—

(1) in the item relating to section 2710, by striking out “2710” and inserting “2711” in lieu thereof; and

(2) by inserting after the item relating to section 2709 the following new item:

“2710. Wrongful disclosure of video tape rental or sale records.”.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S. 2361:

SENATE REPORTS: No. 100-599 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 14, considered and passed Senate.

Oct. 19, considered and passed House.

Public Law 100-619
100th Congress

An Act

Nov. 5, 1988

[S. 2885]

To amend the Hunger Prevention Act of 1988 to make a technical correction.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TECHNICAL CORRECTION.

7 USC 2012 note.

In section 701(b)(4) strike out “and sections 310 through 352” and insert in lieu thereof “sections 310 through 343, and sections 345 through 352”.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S. 2885:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 12, considered and passed Senate.

Oct. 20, considered and passed House.

Public Law 100-620
100th Congress

Joint Resolution

Designating the month of November 1988 as "National Alzheimer's Disease Month".

Nov. 5, 1988

[S.J. Res. 261]

Whereas more than two and one-half million Americans are affected by Alzheimer's disease, which is a surprisingly common disorder that destroys certain vital cells of the brain;

Whereas Alzheimer's disease is the fourth leading cause of death among older Americans;

Whereas Alzheimer's disease is responsible for 50 per centum of all nursing home admissions, at an annual cost of more than \$25,000,000,000;

Whereas in one-third of all American families one parent will succumb to this disease;

Whereas Alzheimer's disease is not a normal consequence of aging; and

Whereas an increase in the national awareness of the problem of Alzheimer's disease and recognition of national organizations such as Alzheimer's Disease and Related Disorders Association may stimulate the interest and concern of the American people, which may lead, in turn, to increased research and eventually to the discovery of a cure for Alzheimer's disease: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of November 1988, is designated as "National Alzheimer's Disease Month". The President is requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate ceremonies and activities.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S.J. Res. 261:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-621
100th Congress

Joint Resolution

Nov. 5, 1988

[S.J. Res. 272]

To designate November, 1988, as "National Diabetes Month".

Whereas diabetes is a leading cause of death by disease in the United States;

Whereas diabetes afflicts 11,000,000 Americans and over 5,000,000 of these individuals are not aware of their illness;

Whereas nearly \$14,000,000,000 annually are spent on health care costs, disability payments, and premature mortality costs due to diabetes;

Whereas up to 85 percent of all cases of non-insulin dependent diabetes may be prevented through greater public understanding, awareness, and education;

Whereas diabetes is particularly prevalent among Black, Hispanic, and Native Americans, and women;

Whereas diabetes is the number one cause of new blindness among people between the ages of 20 and 74, and is a leading cause of kidney disease, heart disease, strokes, birth defects, and lower life expectancy, the severity of which all may be reduced through greater patient and public understanding, awareness, and education: Now therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of November, 1988 is designated as "National Diabetes Month" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that month with appropriate programs, ceremonies, and activities.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S.J. Res. 272:

CONGRESSIONAL RECORD, Vol. 134 (1988):
July 26, considered and passed Senate.
Oct. 21, considered and passed House.



Public Law 100-622
100th Congress

Joint Resolution

Designating the day of August 7, 1989, as "National Lighthouse Day".

Nov. 5, 1988

[S.J. Res. 306]

Whereas August, 7, 1989, marks the 200th anniversary of the signing by President Washington of the Lighthouse Act; and

Whereas that Act, established a Federal role in the support, maintenance, and repair of all lighthouses, beacon buoys, and public piers necessary for safe navigation; commissioned the first Federal lighthouse, and represents the first public works Act in the young country; and

Whereas lighthouses played an integral role in the rich maritime history of the United States as that history spread from the Atlantic coast, through the Great Lakes and Gulf coast, to the Pacific States; and

Whereas these impressive structures, standing at land's end through two centuries, have symbolized safety, security, heroism, duty, and faithfulness; and

Whereas architects, designers, engineers, builders, and keepers devoted, and in some cases, jeopardized, their lives for the safety of others; and

Whereas by 1989 the United States Coast Guard will complete the automation of all Coast Guard lights, concluding a rich, colorful, and significant chapter in American history; and

Whereas this heritage is further threatened by neglect, vandalism, and deterioration by the elements; and

Whereas the many completed, ongoing, or planned private and public efforts to preserve lighthouses demonstrate the public support for these historic structures: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the day of August 7, 1989, is designated as "National Lighthouse Day"; that to the extent feasible, lighthouse grounds should be open to the general public; and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such a day with appropriate ceremonies and activities.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S.J. Res. 306:

CONGRESSIONAL RECORD, Vol. 134 (1988):
July 26, considered and passed Senate.
Oct. 21, considered and passed House.

Public Law 100-623
100th Congress

Joint Resolution

Nov. 5, 1988
[S.J. Res. 319]

To designate the period commencing November 6, 1988, and ending November 12, 1988, as "National Disabled Americans Week".

- Whereas there are some 36 million Americans who have disabilities and over 25 percent of these disabled Americans have more than one disability;
- Whereas one out of every twelve Americans copes with some form of a disability;
- Whereas although nearly three out of every four Americans without a disability have at least a high-school education, just slightly more than one out of every two disabled Americans have a high school education;
- Whereas a disabled American is two and one-half times as likely to have an income that falls below the poverty line than an American without a disability;
- Whereas the population of disabled Americans will increase dramatically over the next two decades as the science of medical technology continues to improve upon its ability to prolong human life;
- Whereas disabilities increasingly affect Americans as they get older;
- Whereas one working-age black in every seven is disabled;
- Whereas there are 31 million Americans with some form of activity limitation;
- Whereas there are some 8.2 million Americans with a visual impairment;
- Whereas there are some 17 million Americans with a hearing impairment;
- Whereas there are 18.4 million Americans with an orthopedic disability;
- Whereas some 4.2 percent of all American children under age twenty-one have a chronic activity limitation;
- Whereas 3 percent of all American school-aged children have learning disabilities;
- Whereas there are 50,000 American school-aged children under the age of 18 who have emotional or behavioral disabilities;
- Whereas 5 percent of American school-aged children have speech and language disabilities;
- Whereas most disabled Americans recognize that Federal laws enacted since the late 1960's have helped to give better opportunities to disabled Americans;
- Whereas most disabled Americans strongly endorse efforts by the Federal Government to enhance the lives of persons with disabilities;
- Whereas disabled Americans are not alone in their belief that they should be protected by law from discrimination; and
- Whereas the people of the United States can express their concern for all Americans who live with disabilities by recognizing the

right of disabled Americans to participate as integral members of our society: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period beginning November 6, 1988, and ending November 12, 1988, is designated as "National Disabled Americans Week", and the President of the United States is authorized and requested to issue a Proclamation calling upon the people of the United States to observe that week with appropriate ceremonies and activities.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S.J. Res. 319:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-624
100th Congress

Joint Resolution

Nov. 5, 1988

[S.J. Res. 378]

Designating the week of October 2 through 8, 1988, as "National Wild and Scenic Rivers Act Week".

Whereas river corridors are one of the most precious cultural and recreational values in the United States;

Whereas the Wild and Scenic Rivers Act provided for the establishment of a system of rivers to be protected as free-flowing streams for the public use and enjoyment for generations to come;

Whereas there are 3,500,000 miles of rivers in the United States, many of which are protected because of the establishment of the Wild and Scenic Rivers System;

Whereas the Wild and Scenic Rivers Act has encouraged through the State and Local River Conservation Assistance Program authorized by the Act, the cooperative protection of river corridors by Federal, State, and local governments, private groups, and landowners;

Whereas public awareness of the importance of wild and scenic rivers must be raised and public and private cooperation encouraged to promote the continued protection of these precious river values; and

Whereas the Wild and Scenic Rivers Act was signed into law on October 2, 1968: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 2 through 8, 1988, is designated as "National Wild and Scenic Rivers Act Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that week with appropriate programs and activities.

Approved November 5, 1988.

LEGISLATIVE HISTORY—S.J. Res. 378:

CONGRESSIONAL RECORD, Vol. 134 (1988):
Sept. 30, considered and passed Senate.
Oct. 21, considered and passed House.

Public Law 100-625
100th Congress

An Act

To clarify certain restrictions on distribution of advertisements and other information concerning lotteries and similar activities.

Nov. 7, 1988
[H.R. 3146]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Charity Games Advertising Clarification Act of 1988".

Charity Games
Advertising
Clarification Act
of 1988.
State and local
governments.
18 USC 1301
note.

SEC. 2. AMENDMENTS RELATING TO THE MAILING AND BROADCAST OF ADVERTISEMENTS FOR LEGAL LOTTERIES AND SIMILAR ENTERPRISES.

(a) STATE-CONDUCTED LOTTERIES UNDER TITLE 18.—Subsection (a) of section 1307 of title 18, United States Code, is amended to read as follows:

"(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—

"(1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—

"(A) contained in a publication issued in that State or in a State which conducts such a lottery; or

"(B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or

"(2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—

"(A) conducted by a not-for-profit organization or a governmental organization; or

"(B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization."

(b) DEFINITION OF NOT-FOR-PROFIT ORGANIZATION.—Subsection (d) of section 1307 of title 18, United States Code, is amended by adding at the end thereof "For purposes of this section, the term a 'not-for-profit organization' means any organization that would qualify as tax exempt under section 501 of the Internal Revenue Code of 1986."

(c) POSTAL SERVICE REGULATION OF LOTTERIES.—Paragraph (1) of section 3005(d) of title 39, United States Code, is amended to read as follows: "(1) publications containing advertisements, lists of prizes, or information concerning a lottery, which are exempt, pursuant to section 1307 of title 18 of the United States Code, from the provisions of sections 1301, 1302, 1303, and 1304 of title 18 of the United States Code,".

SEC. 3. TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 18, UNITED STATES CODE.—Chapter 61 of title 18, United States Code, is amended as follows:

(1) The section heading of section 1307 is amended to read as follows:

“§ 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries”.

(2) The item relating to section 1307 in the table of sections at the beginning of chapter 61 is amended to read as follows:

“Sec. 1307. Exceptions relating to certain advertisements and other information and to State-conducted lotteries.”.

(3) Subsection (d) of section 1307 is amended by inserting after “purposes of” the following: “subsection (b) of”.

(4) The first sentence of section 1304 is amended by inserting after “radio” the following: “or television”.

18 USC 1307
note.

SEC. 4. SEVERABILITY.

If any provision of this Act or the amendments made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

18 USC 1304
note.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect 18 months after the date of the enactment of this Act.

Approved November 7, 1988.

LEGISLATIVE HISTORY—H.R. 3146:

HOUSE REPORTS: No. 100-557, Pt. 1 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

May 10, 25, considered and passed House.

Oct. 14, considered and passed Senate, amended.

Oct. 19, House concurred in Senate amendment.

Public Law 100-626
100th Congress

An Act

To amend and extend the authorization of appropriations for public broadcasting,
and for other purposes.

Nov. 7, 1988
[H.R. 4118]

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

Public
Telecommunications
Act of 1988.

SHORT TITLE

SECTION 1. This Act may be cited as the "Public Telecommuni-
cations Act of 1988".

47 USC 609 note.

PUBLIC TELECOMMUNICATIONS FACILITIES AUTHORIZATIONS

SEC. 2. Section 391 of the Communications Act of 1934 (47 U.S.C.
391) is amended—

- (1) by striking "and" after "1987,"; and
- (2) by inserting "\$36,000,000 for fiscal year 1989, \$39,000,000
for fiscal year 1990, and \$42,000,000 for fiscal year 1991," imme-
diately after "1988,".

CORPORATION FOR PUBLIC BROADCASTING AUTHORIZATIONS

SEC. 3. Section 396(k)(1)(C) of the Communications Act of 1934 (47
U.S.C. 396(k)(1)(C)) is amended—

- (1) by striking "and 1990" and inserting in lieu thereof "1990,
1991, 1992, and 1993";
- (2) by striking "50 percent" and inserting in lieu thereof "40
percent";
- (3) by striking "and" after "fiscal year 1989,"; and
- (4) by inserting before the period at the end thereof the
following: ", \$245,000,000 for fiscal year 1991, \$265,000,000 for
fiscal year 1992, and \$285,000,000 for fiscal year 1993".

PUBLIC BROADCASTING SATELLITE INTERCONNECTION FUND

SEC. 4. (a) Section 396(k) of the Communications Act of 1934 (47
U.S.C. 396(k)) is amended by adding at the end thereof the following
new paragraph:

"(10)(A) There is hereby established in the Treasury a fund which
shall be known as the Public Broadcasting Satellite Interconnection
Fund (hereinafter in this subsection referred to as the 'Satellite
Interconnection Fund'), to be administered by the Secretary of the
Treasury.

"(B) There is authorized to be appropriated to the Satellite Inter-
connection Fund, for fiscal year 1991, the amount of \$200,000,000. If
such amount is not appropriated in full for fiscal year 1991, the
portion of such amount not yet appropriated is authorized to be
appropriated for fiscal years 1992 and 1993. Funds appropriated to
the Satellite Interconnection Fund shall remain available until
expended.

“(C) The Secretary of the Treasury shall make available and disburse to the Corporation, at the beginning of fiscal year 1991 and of each succeeding fiscal year thereafter, such funds as have been appropriated to the Satellite Interconnection Fund for the fiscal year in which such disbursement is to be made.

“(D) Notwithstanding any other provision of this subsection except paragraphs (4), (5), (8), and (9), all funds appropriated to the Satellite Interconnection Fund and interest thereon—

“(i) shall be distributed by the Corporation to the licensees and permittees of noncommercial educational television broadcast stations providing public telecommunications services or the national entity they designate for satellite interconnection purposes and to those public telecommunications entities participating in the public radio satellite interconnection system or the national entity they designate for satellite interconnection purposes, exclusively for the capital costs of the replacement, refurbishment, or upgrading of their national satellite interconnection systems and associated maintenance of such systems; and

“(ii) shall not be used for the administrative costs of the Corporation, the salaries or related expenses of Corporation personnel and members of the Board, or for expenses of consultants and advisers to the Corporation.”.

Reports.

47 USC 396 note.

(b) On or before March 1, 1990, the Corporation for Public Broadcasting, on behalf of the public radio and public television licensees and permittees (or their designated representatives), shall submit to Congress a report by such licensees or permittees (or their representatives) detailing the satellite replacement needs of public radio and public television, the difference in cost between leasing satellite transponder capacity and buying such capacity, and the availability of private sector rather than Federal financing.

FINDING WITH RESPECT TO CERTAIN PROGRAMMING

SEC. 5. Section 396(a) of the Communications Act of 1934 (47 U.S.C. 396(a)) is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) by inserting immediately after paragraph (5) the following new paragraph:

“(6) it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;”.

EXERCISE OF BUSINESS JUDGMENT BY CORPORATION

SEC. 6. Section 396(g)(2)(B)(ii) of the Communications Act of 1934 (47 U.S.C. 396(g)(2)(B)(ii)) is amended by striking “contract or”.

ALLOCATION OF CORPORATION FUNDING

SEC. 7. (a) Section 396(k)(3)(A)(i) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(i)) is amended—

(1) by amending subclause (I) to read as follows:

“(I) \$10,200,000 shall be available for the administrative expenses of the Corporation for fiscal year 1989, and for each succeeding fiscal year the amount which shall be available for

such administrative expenses shall be the sum of the amount made available to the Corporation under this subclause for such expenses in the preceding fiscal year plus the greater of 4 percent of such amount or a percentage of such amount equal to the percentage change in the Consumer Price Index, except that none of the amounts allocated under subclauses (II), (III), and (IV) and clause (v) shall be used for any administrative expenses of the Corporation and not more than 5 percent of all the amounts appropriated into the Fund available for allocation for any fiscal year shall be available for such administrative expenses;”;

(2) subclause (II) is amended to read as follows:

“(II) 6 percent of such amounts shall be available for expenses incurred by the Corporation for capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, the costs of interconnection facilities and operations (as provided in clause (iv)(I)), and grants which the Corporation may make for assistance to stations that broadcast programs in languages other than English, and if the available funding level permits, for projects and activities that will enhance public broadcasting;”;

(3) in subclause (III), by striking “clause (ii)(I)” and inserting in lieu thereof “clause (ii)”.

(b) Section 396(k)(3)(A)(ii)(II) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(ii)(II)) is amended by striking “for public” and inserting in lieu thereof the following: “, and in accordance with any plan implemented under paragraph (6)(A), for national public”.

(c) Clause (iii) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

“(iii) Of the amounts allocated under clause (i)(IV) for any fiscal year—

“(I) 70 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B);

“(II) 7 percent of such amounts shall be available for distribution under subparagraph (B)(i) for public radio programming; and

“(III) 23 percent of such amounts shall be available for distribution among the licensees and permittees of public radio stations pursuant to paragraph (6)(B), solely to be used for acquiring or producing programming that is to be distributed nationally and is designed to serve the needs of a national audience.”.

(d) Clause (v) of section 396(k)(3)(A) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)) is amended to read as follows:

“(v) Of the interest on the amounts appropriated into the Fund which is available for allocation for any fiscal year—

“(I) 75 percent shall be available for distribution for the purposes referred to in clause (ii)(II); and

“(II) 25 percent shall be available for distribution for the purposes referred to in clause (iii) (II) and (III).”.

(e) Section 396(k)(3)(A)(iv)(I) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(iv)(I)) is amended by striking “Subject to the provisions of clause (v),” and inserting in lieu thereof the following: “From the amount provided pursuant to clause (i)(II),”.

(f) Subparagraph (B)(i) of section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended to read as follows:

ants.

“(B)(i) The Corporation shall utilize the funds allocated pursuant to subparagraph (A)(ii)(II) and subparagraph (A)(iii)(II) to make grants for production of public television or radio programs by independent producers and production entities and public telecommunications entities, producers of national children’s educational programming, and producers of programs addressing the needs and interests of minorities, and for acquisition of such programs by public telecommunications entities. The Corporation may make grants to public telecommunications entities and producers for the production of programs in languages other than English. Of the funds utilized pursuant to this clause, a substantial amount shall be distributed to independent producers and production entities, producers of national children’s educational programming, and producers of programming addressing the needs and interests of minorities for the production of programs.”

(g) Section 396(k)(3) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)) is amended by striking subparagraphs (C) and (D).

(h) Paragraph (6)(A) of section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) is amended to read as follows:

“(6)(A) The Corporation shall conduct a study and prepare a plan, in consultation with public television licensees (or designated representatives of those licensees) and the Public Broadcasting Service, on how funds available to the Corporation under paragraph (3)(A)(ii)(II) can be best allocated to meet the objectives of this Act with regard to national public television programming. The plan, which shall be based on the conclusions resulting from the study, shall be submitted by the Corporation to the Congress not later than January 31, 1990. Unless directed otherwise by an Act of Congress, the Corporation shall implement the plan during the first fiscal year beginning after the fiscal year in which the plan is submitted to Congress.”

(i) Section 396(k)(6)(B) of the Communications Act of 1934 (47 U.S.C. 396(k)(6)(B)) is amended by inserting immediately after the first sentence the following new sentence: “The Corporation shall assist radio stations to maintain and improve their service where public radio is the only broadcast service available.”

(j) Section 396(k)(7) of the Communications Act of 1934 (47 U.S.C. 396(k)(7)) is amended by inserting “(ii)(I) and (iii)(I)” immediately after “paragraph (3)(A)”.

INDEPENDENT PRODUCTION

Sec. 8. Section 396(k)(3)(B) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(B)) is amended by adding at the end the following new clause:

“(iii)(I) For fiscal year 1990 and succeeding fiscal years, the Corporation shall, in carrying out its obligations under clause (i) with respect to public television programming, provide adequate funds for an independent production service.

“(II) Such independent production service shall be separate from the Corporation and shall be incorporated under the laws of the District of Columbia for the purpose of contracting with the Corporation for the expenditure of funds for the production of public television programs by independent producers and independent production entities.

“(III) The Corporation shall work with organizations or associations of independent producers or independent production entities to

develop a plan and budget for the operation of such service that is acceptable to the Corporation.

“(IV) The Corporation shall ensure that the funds provided to such independent production service shall be used exclusively in pursuit of the Corporation’s obligation to expand the diversity and innovativeness of programming available to public broadcasting.

“(V) The Corporation shall report annually to Congress regarding the activities and expenditures of the independent production service. At the end of fiscal year 1992, the Corporation shall submit a report to Congress evaluating the performance of the independent production service in light of its mission to expand the diversity and innovativeness of programming available to public broadcasting.”.

Reports.

NEEDS OF MINORITIES AND OTHER GROUPS

SEC. 9. (a) Section 396 of the Communications Act of 1934 (47 U.S.C. 396) is amended by adding at the end the following new subsection:

“(m)(1) Prior to July 1, 1989, and every three years thereafter, the Corporation shall compile an assessment of the needs of minority and diverse audiences, the plans of public broadcasting entities and public telecommunications entities to address such needs, the ways radio and television can be used to help these underrepresented groups, and projections concerning minority employment by public broadcasting entities and public telecommunications entities. Such assessment shall address the needs of racial and ethnic minorities, new immigrant populations, people for whom English is a second language, and adults who lack basic reading skills.

“(2) Commencing July 1, 1989, the Corporation shall prepare an annual report on the provision by public broadcasting entities and public telecommunications entities of service to the audiences described in paragraph (1). Such report shall address programming (including that which is produced by minority producers), training, minority employment, and efforts by the Corporation to increase the number of minority public radio and television stations eligible for financial support from the Corporation.

Reports.

“(3) As soon as they have been prepared, each assessment and annual report required under paragraphs (1) and (2) shall be submitted to Congress.”.

(b) Section 398(b)(1) of the Communications Act of 1934 (47 U.S.C. 398(b)(1)) is amended by inserting, immediately after “‘recipients’”, the following: “in accordance with the equal employment opportunity regulations of the Commission.”.

PROHIBITION AGAINST EDITORIALIZING

SEC. 10. (a) Section 399 of the Communications Act of 1934 (47 U.S.C. 399) is amended by striking the first sentence.

(b) The heading of such section is amended by striking “EDITORIALIZING AND”.

SCRAMBLING OF PUBLIC BROADCASTING SERVICE PROGRAMMING

SEC. 11. Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

“(c) No person shall encrypt or continue to encrypt satellite delivered programs included in the National Program Service of the Public Broadcasting Service and intended for public viewing by retransmission by television broadcast stations; except that as long as at least one unencrypted satellite transmission of any program subject to this subsection is provided, this subsection shall not prohibit additional encrypted satellite transmissions of the same program.”.

EFFECTIVE DATES

USC 391 note.

SEC. 12. This Act and the amendments made by this Act are effective on the date of enactment of this Act, except that the amendments made by sections 6 and 7(d) are effective on October 1, 1989.

Approved November 7, 1988.

LEGISLATIVE HISTORY—H.R. 4118 (S. 2114):

HOUSE REPORTS: No. 100-825 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 100-444 accompanying S. 2114 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 7, S. 2114 considered and passed Senate.

Oct. 19, H.R. 4118 considered and passed House.

Oct. 20, considered and passed Senate.

Public Law 100-627
99th Congress

An Act

to authorize appropriations to carry out titles II and III of the Marine Protection, Research, and Sanctuaries Act of 1972, to establish the National Oceans Policy Commission, and for other purposes.

Nov. 7, 1988
[H.R. 4210]

it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—COMPREHENSIVE OCEAN DUMPING RESEARCH PROGRAM AMENDMENTS AND AUTHORIZATION

101. RESEARCH TO BE CONSISTENT WITH COMPREHENSIVE PLAN.

Subsection (a) of section 202 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1442(a)) is amended by adding at the end the following:

“(b) The Secretary of Commerce shall ensure that the comprehensive and continuing research program conducted under this subsection is consistent with the comprehensive plan for ocean pollution research and development and monitoring prepared under section 4 of the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1442(b)).”

102. ANNUAL REPORT.

Section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1444) is amended by adding at the end the following:

“(c) On October 31 of each year, the Under Secretary shall report to Congress the specific programs that the National Oceanic and Atmospheric Administration and the Environmental Protection Agency carried out pursuant to this title in the previous fiscal year, specifically listing the amount of funds allocated to those specific programs in the previous fiscal year.”

103. AUTHORIZATION.

Section 205 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1445) is amended—

(1) by striking “and” immediately following “fiscal year 1986,”; and

(2) by striking “1987.” and inserting in lieu thereof “1987, not to exceed \$13,500,000 for fiscal year 1989, and not to exceed \$14,500,000 for fiscal year 1990.”

TITLE II—NATIONAL MARINE SANCTUARIES PROGRAM AMENDMENTS AND AUTHORIZATION

201. DEFINITION OF ACT.

For purposes of this title, the term “Act” means title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1439).

SEC. 202. SANCTUARY DESIGNATION PROCEDURE AMENDMENTS.

Federal
Register,
publication.

Paragraph (1) of section 304(b) of the Act (16 U.S.C. 1434(b)(1)) is amended by inserting after the second sentence the following: "The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published."

SEC. 203. PROMOTION AND COORDINATION OF RESEARCH; SPECIAL USE PERMITS; USE OF DONATIONS.

The Act is amended—

16 USC 1438.

(1) by striking section 308;

16 USC 1439.

(2) by redesignating section 309 as section 308; and

(3) by adding at the end the following:

16 USC 1440.

"SEC. 309. PROMOTION AND COORDINATION OF RESEARCH.

"The Secretary shall take such action as is necessary to promote and coordinate the use of national marine sanctuaries for research purposes, including—

"(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting marine research, give priority to research involving national marine sanctuaries; and

"(2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries for marine research.

16 USC 1441.

"SEC. 310. SPECIAL USE PERMITS.

"(a) **ISSUANCE OF PERMITS.**—The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—

"(1) to establish conditions of access to and use of any sanctuary resource; or

"(2) to promote public use and understanding of a sanctuary resource.

"(b) **PERMIT TERMS.**—A permit issued under this section—

"(1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;

"(2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;

"(3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and

"(4) shall require the permittee to purchase and maintain comprehensive general liability insurance against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

"(c) **FEES.**—

"(1) **ASSESSMENT AND COLLECTION.**—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

“(2) **AMOUNT.**—The amount of a fee under this subsection shall be equal to the sum of—

“(A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;

“(B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and

“(C) an amount which represents the fair market value of the use of the sanctuary resource and a reasonable return to the United States Government.

“(3) **USE OF FEES.**—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—

“(A) for issuing and administering permits under this section; and

“(B) for expenses of designating and managing national marine sanctuaries.

“(d) **VIOLATIONS.**—Upon violation of a term or condition of a permit issued under this section, the Secretary may—

“(1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;

“(2) assess a civil penalty in accordance with section 307; or

“(3) both.

“(e) **REPORTS.**—Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

“(f) **FISHING.**—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

SEC. 311. COOPERATIVE AGREEMENTS AND DONATIONS.

16 USC 1442.

“(a) **COOPERATIVE AGREEMENTS.**—The Secretary may enter into cooperative agreements with any nonprofit organization—

“(1) to aid and promote interpretive, historical, scientific, and educational activities; and

“(2) for the solicitation of private donations for the support of such activities.

“(b) **DONATIONS.**—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title.”

SEC. 204. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

(a) **LIABILITY FOR DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.**—The Act is amended by adding at the end the following:

SEC. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

16 USC 1443.

“(a) **LIABILITY.**—

“(1) **IN GENERAL.**—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.

"(2) **LIABILITY IN REM.**—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

"(3) **DEFENSES.**—A person is not liable under this subsection if that person establishes that—

"(A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;

"(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

"(C) the destruction, loss, or injury was negligible.

"(b) **RESPONSE ACTIONS AND DAMAGE ASSESSMENT.**—

"(1) **RESPONSE ACTIONS.**—The Secretary may undertake all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.

"(2) **DAMAGE ASSESSMENT.**—The Secretary shall assess damages to sanctuary resources in accordance with section 302(6).

"(c) **CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.**—The Attorney General, upon request of the Secretary, may commence a civil action in the United States district court for the appropriate district against any person or vessel who may be liable under subsection (a) for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.

"(d) **USE OF RECOVERED AMOUNTS.**—Response costs and damages recovered by the Secretary under this section and civil penalties under section 307 shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

"(1) **RESPONSE COSTS AND DAMAGE ASSESSMENTS.**—Twenty percent of amounts recovered under this section, up to a maximum balance of \$750,000, shall be used to finance response actions and damage assessments by the Secretary.

"(2) **RESTORATION, REPLACEMENT, MANAGEMENT, AND IMPROVEMENT.**—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—

"(A) to restore, replace, or acquire the equivalent of the sanctuary resources which were the subject of the action;

"(B) to manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the action; and

"(C) to manage and improve any other national marine sanctuary.

"(3) **USE OF CIVIL PENALTIES.**—Amounts recovered under section 307 in the form of civil penalties shall be used by the Secretary in accordance with section 307(e) and paragraphs (2) (B) and (C) of this subsection.

"(4) **FEDERAL-STATE COORDINATION.**—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2) (A) and (B) in accordance with an agreement entered into by the Secretary and the Governor of that State."

(b) DAMAGES, RESPONSE COSTS, AND SANCTUARY RESOURCE DEFINED.—Section 302 of the Act (16 U.S.C. 1432) is amended—

(1) by striking “and” at the end of paragraph (4);

(2) by striking the period in paragraph (5) and inserting “; and”; and

(3) by adding at the end the following:

“(6) ‘damages’ includes—

“(A) compensation for—

“(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

“(II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

“(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired; and

“(B) the cost of damage assessments under section 312(b)(2);

“(7) ‘response costs’ means the costs of actions taken by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury; and

“(8) ‘sanctuary resource’ means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary.”

(c) EFFECTIVE DATE.—Amounts in the form of damages received by the United States after November 30, 1986, for destruction or loss of, or injury to, a sanctuary resource (as that term is defined in section 302(8) of the Act (as amended by this Act)) shall be subject to section 312 of the Act (as amended by this Act).

16 USC 1443
note.

SEC. 205. ACTIONS WITH RESPECT TO NEW SANCTUARIES.

(a) ISSUANCE OF NOTICE OF DESIGNATION.—The Secretary of Commerce shall issue a notice of designation under section 304(b)(1) of the Act (16 U.S.C. 1434(b)(1))—

(1) with respect to the proposed Cordell Banks National Marine Sanctuary as generally described in the Federal Register notice of June 30, 1983, not later than December 31, 1988;

(2) with respect to the Flower Garden Banks National Marine Sanctuary as generally described in the Federal Register notice of August 2, 1984, not later than March 31, 1989;

(3) with respect to the Monterey Bay National Marine Sanctuary as generally described in the Federal Register notice of December 31, 1979, not later than December 31, 1989; and

(4) with respect to the Western Washington Outer Coast National Marine Sanctuary as generally described in the Federal Register notice of August 4, 1983, not later than June 30, 1990.

(b) SUBMISSION OF PROSPECTUSES.—The Secretary of Commerce shall submit a prospectus under section 304(a)(1)(C) and (a)(5) of the Act (16 U.S.C. 1434(a)(1)(C) and (a)(5)) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate—

(1) with respect to the Stellwagen Bank National Marine Sanctuary, as generally described in the Federal Register notice of August 4, 1983, not later than September 30, 1990; and

(2) with respect to the Northern Puget Sound National Marine Sanctuary, as generally described as the Washington State Nearshore area in the Federal Register notice of August 4, 1983, not later than March 31, 1991.

SEC. 206. STUDY OF AREAS FOR DESIGNATION AS OR INCLUSION IN NATIONAL MARINE SANCTUARIES.

(a) STUDY.—

(1) **IN GENERAL.**—The Secretary of Commerce shall conduct a study of the areas described in subsection (c) for purposes of making determinations and findings in accordance with section 303(a) of the Act (16 U.S.C. 1433(a))—

(A) regarding whether or not all or any part of such areas are appropriate for designation as national marine sanctuaries in accordance with the Act; and

(B) regarding whether or not all or any part of the areas described in subsection (c) (1), (2), and (3) should be added to and administered as part of the Key Largo National Marine Sanctuary or the Looe Key National Marine Sanctuary.

(2) **REPORT.**—Not later than 2 years after the date of the enactment of this Act, the Secretary of Commerce shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate which sets forth the determinations and findings referred to in paragraph (1).

(b) **DESIGNATION OR EXPANSION OF MARINE SANCTUARIES.**—If as a result of a study conducted pursuant to subsection (a) the Secretary of Commerce makes the determinations and findings set forth in section 303(a) of the Act (16 U.S.C. 1433(a)) with respect to all or any part of the areas described in subsection (c), the Secretary of Commerce, in accordance with the procedures for the designation of national marine sanctuaries set forth in section 304 of the Act (16 U.S.C. 1434)—

(1) shall designate such areas or parts of such areas as national marine sanctuaries; or

(2) shall, with respect to all or any part of the areas described in subsections (c) (1), (2), and (3), add such areas or parts of such areas to the Key Largo National Marine Sanctuary or the Looe Key National Marine Sanctuary;

as the Secretary of Commerce considers appropriate.

(c) **AREAS DESCRIBED.**—The areas referred to in subsections (a) and (b) are the following:

(1) **AMERICAN SHOAL.**—The portion of the marine environment in the Florida Keys in the vicinity of American Shoal, including the part of such environment located generally between such shoal and the Marquesas Keys.

(2) **SOMBRERO KEY.**—The portion of the marine environment in the Florida Keys in the vicinity of and surrounding Sombrero Key.

(3) **ALLIGATOR REEF.**—The portion of the marine environment in the Florida Keys in the vicinity of and surrounding Alligator Reef, including the portion located generally between such reef and the Key Largo National Marine Sanctuary.

(4) **SANTA MONICA BAY.**—The portion of the marine environment off the coast of California commonly referred to as Santa Monica Bay, consisting of an area described generally as follows: Beginning at the point known as Point Dume near the western extent of Santa Monica Bay, proceed generally southeast along the shoreline to the point known as Point Vincente near the southern extent of Santa Monica Bay; then west to the 900 meter bathymetric contour; then generally northwest along the 900 meter bathymetric contour to a point due west of Point Dume; then east to Point Dume at the point of beginning.

California.

(d) **DEFINITION OF MARINE ENVIRONMENT.**—For the purposes of this section, the term “marine environment” has the meaning such term has in section 302(3) of the Act (16 U.S.C. 1432(b)).

SEC. 207. ENFORCEMENT AMENDMENTS.

Section 307 of the Act (16 U.S.C. 1437) is amended to read as follows:

SEC. 307. ENFORCEMENT.

“(a) **IN GENERAL.**—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title.

“(b) **POWERS OF AUTHORIZED OFFICERS.**—Any person who is authorized to enforce this title may—

“(1) board, search, inspect, and seize any vessel suspected of being used to violate this title or any regulation or permit issued under this title and any equipment, stores, and cargo of such vessel;

“(2) seize wherever found any sanctuary resource taken or retained in violation of this title or any regulation or permit issued under this title;

“(3) seize any evidence of a violation of this title or of any regulation or permit issued under this title;

“(4) execute any warrant or other process issued by any court of competent jurisdiction; and

“(5) exercise any other lawful authority.

“(c) **CIVIL PENALTIES.**—

“(1) **CIVIL PENALTY.**—Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title shall be liable to the United States for a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

“(2) **NOTICE.**—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

“(3) **IN REM JURISDICTION.**—A vessel used in violating this title or any regulation or permit issued under this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction.

“(4) **REVIEW OF CIVIL PENALTY.**—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.

“(5) **COLLECTION OF PENALTIES.**—If any person fails to pay an assessment of a civil penalty under this section after it has

become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

“(6) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

“(d) FORFEITURE.—

“(1) IN GENERAL.—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this title or of any regulation or permit issued under this title shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection.

“(2) APPLICATION OF THE CUSTOMS LAWS.—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this title.

“(3) DISPOSAL OF SANCTUARY RESOURCES.—Any sanctuary resource seized pursuant to this title may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

“(4) PRESUMPTION.—For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this title or of any regulation or permit issued under this title were taken or retained in violation of this title or of a regulation or permit issued under this title.

“(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—

“(1) IN GENERAL.—Notwithstanding any other law, the Secretary may use amounts received under this section in the form of civil penalties, forfeitures of property, and costs imposed under paragraph (2) to pay—

“(A) the reasonable and necessary costs incurred by the Secretary in providing temporary storage, care, and maintenance of any sanctuary resource or other property seized under this section pending disposition of any civil proceeding relating to any alleged violation with respect to which such property or sanctuary resource was seized; and

“(B) a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or of any regulation or permit issued under this title.

“(2) LIABILITY FOR COSTS.—Any person assessed a civil penalty for a violation of this title or of any regulation or permit issued under this title, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of

any sanctuary resource or other property seized in connection with the violation.

“(f) **SUBPOENAS.**—In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, United States Code, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths.

“(g) **USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.**—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

“(h) **COAST GUARD AUTHORITY NOT LIMITED.**—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14, United States Code.

“(i) **INJUNCTIVE RELIEF.**—If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 312, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.”

Courts, U.S.

SEC. 208. AUTHORIZATION OF APPROPRIATIONS; U.S.S. MONITOR ARTIFACTS AND MATERIALS.

The Act is amended by adding at the end the following:

SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

16 USC 1444.

“There are authorized to be appropriated to the Secretary to carry out this title the following:

“(1) **GENERAL ADMINISTRATION.**—For general administration of this title—

“(A) \$1,800,000 for fiscal year 1989;

“(B) \$1,900,000 for fiscal year 1990;

“(C) \$2,000,000 for fiscal year 1991; and

“(D) \$2,100,000 for fiscal year 1992.

“(2) **MANAGEMENT OF SANCTUARIES.**—For management of national marine sanctuaries designated under this title—

“(A) \$2,000,000 for fiscal year 1989;

“(B) \$2,500,000 for fiscal year 1990;

“(C) \$3,000,000 for fiscal year 1991; and

“(D) \$3,250,000 for fiscal year 1992.

“(3) **SITE REVIEW AND ANALYSIS.**—For review and analysis of sites for designation under this title as national marine sanctuaries—

“(A) \$450,000 for fiscal year 1989;

“(B) \$500,000 for fiscal year 1990;

“(C) \$550,000 for fiscal year 1991; and

“(D) \$600,000 for fiscal year 1992.

North Carolina.
16 USC 1445.

"SEC. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS.

"(a) **CONGRESSIONAL POLICY.**—In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina.

"(b) INTERPRETATION AND DISPLAY OF ARTIFACTS.—

"(1) **SUBMISSION OF PLAN.**—The Secretary shall, within six months after the date of the enactment of this section, submit to the Committee on Merchant Marine and Fisheries of the House of Representatives a plan for a suitable display in coastal North Carolina of artifacts and materials of the United States ship Monitor.

"(2) **CONTENTS OF PLAN.**—The plan submitted under subsection (a) shall, at a minimum, contain—

"(A) an identification of appropriate sites in coastal North Carolina, either existing or proposed, for display of artifacts and materials of the United States ship Monitor;

"(B) an identification of suitable artifacts and materials, including artifacts recovered or proposed for recovery, for display in coastal North Carolina;

"(C) an interpretive plan for the artifacts and materials which focuses on the sinking, discovery, and subsequent management of the wreck of the United States ship Monitor; and

"(D) a draft cooperative agreement with the State of North Carolina to implement the plan.

"(c) **DISCLAIMER.**—This section shall not affect the following:

"(1) **RESPONSIBILITIES OF SECRETARY.**—The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.

"(2) **AUTHORITY OF SECRETARY.**—The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1)."

Virginia.

SEC. 209. CHANNEL ISLANDS NATIONAL MARINE SANCTUARY PROTECTION.

(a) **REPORT.**—The Secretary of Transportation, not later than 6 months after the date of the enactment of this Act, shall transmit to Congress—

(1) the provisions of international conventions and United States laws and regulations which reduce the risk of a vessel collision or incident resulting in damage to the environment in the Channel Islands National Marine Sanctuary;

(2) the provisions of the National Contingency Plan for removal of oil and hazardous substances prepared under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1321(c)) which enable the Secretary to effectively respond to an oil pollution incident in or affecting the Channel Islands National Marine Sanctuary;

(3) a list of pollution exercises conducted under that National Contingency Plan in the Santa Barbara Channel before the date of the enactment of this Act, and a schedule of pollution exer-

cises scheduled to be conducted under that plan in that channel during the 12 months following the date of the enactment of this Act; and

(4) a report on the establishment—

(A) under the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.) of safety fairways off the coast of California; and

(B) of the Long Beach NAVTEX in Long Beach, California.

STUDY REVIEW AND REPORT.—The Secretary of Transportation shall review all Federal, State, and local studies conducted on the risks of shipping operations and the risks those operations pose to the environment and natural resources of the Channel Islands National Marine Sanctuary, and report to the Congress not later than 6 months after the date of the enactment of this Act on the results and recommendations of each of those studies. The Secretary shall include in the report a recommendation on whether an alternative vessel traffic separation scheme would reduce the risks of shipping operations to the environment and natural resources in the Channel Islands National Marine Sanctuary.

PROPOSAL OF DESIGNATION OF AREA TO BE AVOIDED.—The Secretary of Transportation shall prepare and submit a proposal to the International Maritime Organization to designate the portion of the Channel Islands National Marine Sanctuary which is outside of the Santa Barbara Channel Traffic Separation Scheme, as an area to be avoided. The Secretary shall ensure that the proposal would not result in undue interference with international vessel traffic in the Santa Barbara Channel, with operations associated with the United States Navy Pacific Missile Test Range, or with enjoyment of the Channel Islands National Marine Sanctuary under title III of the Channel Islands National Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1431 et seq.).

210. REGULATIONS.

Not later than one year after the date of the enactment of this Act, the Secretary of Commerce—

(1) shall propose regulations implementing the amendments made by this title; and

(2) shall issue final regulations implementing the amendments made by the Marine Sanctuaries Amendments of 1984.

Approved November 7, 1988.

16 USC 1432
note.

LEGISLATIVE HISTORY—H.R. 4210:

HOUSE REPORTS: No. 100-624, Pt. 1 (Comm. on Merchant Marine and Fisheries).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 3, 4, considered and passed House.

Oct. 12, considered and passed Senate, amended.

Oct. 13, House concurred in Senate amendments.

Public Law 100-628
100th Congress

An Act

Nov. 7, 1988
[H.R. 4352]

Stewart B.
McKinney
Homeless
Assistance
Amendments
Act of 1988.
Disadvantaged
persons.
42 USC 11301
note.

To amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Stewart B. McKinney Homeless Assistance Amendments Act of 1988”.

(b) **TABLE OF CONTENTS.**—

Sec. 1. Short title and table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Budget compliance.

Sec. 102. Annual program summary by Comptroller General.

TITLE II—INTERAGENCY COUNCIL ON THE HOMELESS

Sec. 201. Preparation of bimonthly bulletin.

Sec. 202. Provision of professional and technical assistance.

Sec. 203. Establishment of program timetables.

Sec. 204. Authorization of appropriations.

Sec. 205. Extension of Interagency Council.

Sec. 206. Encouragement of State involvement.

TITLE III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

Sec. 301. Report on emergency food and shelter grant program.

Sec. 302. Authorization of appropriations.

TITLE IV—HOUSING ASSISTANCE

Subtitle A—Comprehensive Homeless Assistance Plan

Sec. 401. Submission of comprehensive plan.

Sec. 402. Contents of comprehensive plan.

Sec. 403. Performance reviews.

Sec. 404. Coordination.

Subtitle B—Emergency Shelter Grants

Sec. 421. Distribution of assistance by States to private nonprofit organizations.

Sec. 422. Essential services.

Sec. 423. Homelessness prevention as an eligible activity.

Sec. 424. Required use of building as shelter.

Sec. 425. Authorization of appropriations.

Subtitle C—Supportive Housing

Sec. 441. Availability of operating and technical assistance for new structures.

Sec. 442. Project sponsor.

Sec. 443. Maximum period of residence in transitional housing.

Sec. 444. Definition of permanent housing.

Sec. 445. Use of advances to repay debt.

Sec. 446. Limit on grants.

Sec. 447. Eligible activities.

Sec. 448. Employment assistance.

Sec. 449. Limits on advances and grants.

Sec. 450. Site control.

Sec. 451. Flood plain restrictions.

- ec. 452. Matching requirement.
- ec. 453. Reports to Congress.
- ec. 454. Authorization of appropriations.
- ec. 455. Reallocations.

Subtitle D—Supplemental Assistance for Facilities To Assist the Homeless

- ec. 461. Use of assistance.
- ec. 462. Reservation of funds.
- ec. 463. Site control.
- ec. 464. Authorization of appropriations.

Subtitle E—Miscellaneous Provisions

- ec. 481. Section 8 assistance for single room occupancy dwellings.
- ec. 482. Administrative provisions.
- ec. 483. Report on effect of rent control on homelessness.
- ec. 484. Report on allocation formulas.
- ec. 485. Regulations.

TITLE V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

- ec. 501. Identification and use of unutilized and underutilized public buildings and property.

TITLE VI—REVISION AND EXTENSION OF PROGRAMS OF HEALTH CARE FOR THE HOMELESS

Subtitle A—Categorical Grants for Primary Health Services and Substance Abuse Services

- ec. 601. Increase in required amount of matching funds and modification in eligibility for waiver with respect to matching funds.
- ec. 602. Establishment of authority for temporary continued provision of services to certain former homeless individuals.
- ec. 603. Clarification with respect to certain provisions.
- ec. 604. Authorization of appropriations.

Subtitle B—Block Grant for Community Mental Health Services

- ec. 611. Authorization of appropriations and contingent conversions to categorical program.
- ec. 612. Eligibility of territories.
- ec. 613. Technical and conforming amendments.

Subtitle C—Authorization of Appropriations for Community Demonstration Projects

- ec. 621. Mental health services for homeless individuals with chronic mental illness.
- ec. 622. Alcohol and drug abuse treatment of homeless individuals.

Subtitle D—General Provisions

- ec. 631. Effective dates.

TITLE VII—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAMS

Subtitle A—Homeless Assistance Programs

- ec. 701. Adult education for the homeless.
- ec. 702. Education for homeless children and youth.
- ec. 703. Job training for the homeless.
- ec. 704. Emergency community services homeless grant program.
- ec. 705. Technical amendments to Older Americans Act of 1965.

Subtitle B—Job Training and Partnership Act

- ec. 711. Short title.
- ec. 712. Incentive bonus entitlement for employable dependent individuals.
- ec. 713. Provisions for improving assistance to hard-to-serve individuals and welfare recipients.
- ec. 714. Conforming and miscellaneous amendments.

TITLE VIII—VETERANS PROGRAMS

- ec. 801. Medical programs.

TITLE IX—AID TO FAMILIES WITH DEPENDENT CHILDREN;
UNEMPLOYMENT COMPENSATION

- Sec. 901. Extension of prohibition against implementation of certain proposed regulations.
- Sec. 902. Review of policy governing use of AFDC funds to meet emergency needs of families eligible for AFDC through emergency assistance or special needs payments; report to Congress.
- Sec. 903. Demonstration projects to reduce number of homeless AFDC families in welfare hotels.
- Sec. 904. Preventing fraud and abuse in housing and urban development programs.

TITLE X—HOUSING AND COMMUNITY DEVELOPMENT TECHNICAL
AMENDMENTS

Subtitle A—Housing Assistance

- Sec. 1001. Income eligibility for assisted housing.
- Sec. 1002. Public housing child care grants.
- Sec. 1003. Public housing resident management.
- Sec. 1004. Prohibition of reduction of section 8 contract rents.
- Sec. 1005. Project-based section 8 assistance.
- Sec. 1006. Section 8 assistance for residents of rental rehabilitation projects.
- Sec. 1007. Rental rehabilitation program.
- Sec. 1008. Tweemill House.
- Sec. 1009. Housing counseling.
- Sec. 1010. Multifamily housing management and preservation.
- Sec. 1011. Multifamily housing capital improvements assistance.
- Sec. 1012. Use of funds recaptured from refinancing State finance projects.
- Sec. 1013. Public housing lease and grievance procedures.
- Sec. 1014. Exceptions to tenant preference provisions.

Subtitle B—Preservation of Low Income Housing

- Sec. 1021. Notice of intent.
- Sec. 1022. Plan of action.
- Sec. 1023. Incentives to extend low income use.
- Sec. 1024. Criteria for approval of plan of action.
- Sec. 1025. Modification of existing regulatory agreements.
- Sec. 1026. Report on notice to tenants and incentives.
- Sec. 1027. Definition of eligible low income housing.
- Sec. 1028. Rural rental housing displacement prevention.
- Sec. 1029. Section 8 loan management program.

Subtitle C—Rural Housing

- Sec. 1041. Implementation of guaranteed loan demonstration.
- Sec. 1042. Section 515 rents.
- Sec. 1043. Availability of domestic farm labor housing for other families.
- Sec. 1044. Rural rental rehabilitation demonstration.
- Sec. 1045. Legal representation in litigation involving collection of claims and obligations arising out of rural housing programs.

Subtitle D—Mortgage Insurance and Secondary Mortgage Market Programs

- Sec. 1061. Change in definition of veteran.
- Sec. 1062. Limitation on use of single family mortgage insurance by investors.
- Sec. 1063. Procedures applicable to assumption of insured mortgages.
- Sec. 1064. Payment of claims on losses from preforeclosure sales.
- Sec. 1065. Mortgage insurance on Hawaiian home lands.
- Sec. 1066. Home equity conversion mortgage insurance demonstration.
- Sec. 1067. Reciprocity in approval of housing subdivisions among Federal agencies.
- Sec. 1068. Permanent authority to purchase second mortgages on multifamily properties.

Subtitle E—Community Development and Miscellaneous Programs

- Sec. 1081. City and county classifications.
- Sec. 1082. Corrections to cross-references.
- Sec. 1083. Conserving neighborhoods and housing by prohibiting displacement.
- Sec. 1084. Urban development action grants.
- Sec. 1085. Neighborhood reinvestment corporation.
- Sec. 1086. National flood insurance program.
- Sec. 1087. Home mortgage disclosure.
- Sec. 1088. Lead-based paint poisoning prevention.

Sec. 1089. Interstate land sales full disclosure.

Sec. 1090. Designation of enterprise zones.

Sec. 1091. Report on recommended policy for dealing with radon in assisted housing.

TITLE I—GENERAL PROVISIONS

SEC. 101. BUDGET COMPLIANCE.

42 USC 11303
note.

(a) **IN GENERAL.**—This Act and the amendments made by this Act may not be construed to provide for new budget authority, budget outlays, or new entitlement authority, for fiscal year 1989 or 1990 in excess of the appropriate aggregate levels established by the concurrent resolution on the budget for such fiscal year for the programs authorized by this Act and the amendments made by this Act.

(b) **DEFINITIONS.**—For purposes of this section, the terms “budget authority”, “budget outlays”, “concurrent resolution on the budget”, and “entitlement authority” have the meanings given such terms in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622).

SEC. 102. ANNUAL PROGRAM SUMMARY BY COMPTROLLER GENERAL.

(a) **IN GENERAL.**—Section 105 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11304) is amended—

(1) by inserting “annually” after “shall”; and

(2) by striking “a report” and all that follows and inserting the following: “to the Congress an annual summary of the status of each program authorized under this Act.”.

(b) **CONFORMING AMENDMENTS.**—

(1) **SECTION HEADING.**—The heading for section 105 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11304) is amended by striking “AUDITS” and inserting “ANNUAL PROGRAM SUMMARY”.

(2) **TABLE OF CONTENTS.**—The item relating to section 105 in the table of contents in section 101(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 prec.) is amended to read as follows:

“Sec. 105. Annual program summary by Comptroller General.”.

TITLE II—INTERAGENCY COUNCIL ON THE HOMELESS

SEC. 201. PREPARATION OF BIMONTHLY BULLETIN.

Section 203(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11313(a)) is amended—

(1) by striking “and” at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(7) prepare and distribute to States (including State contact persons), local governments, and other public and private non-profit organizations, a bimonthly bulletin that describes the Federal resources available to them to assist the homeless, including current information regarding application deadlines and appropriate persons to contact in each Federal agency providing the resources.”.

State and local
governments.

SEC. 202. PROVISION OF PROFESSIONAL AND TECHNICAL ASSISTANCE.

Section 203(a)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11313(a)(4)) is amended—

(1) by striking “, through personnel employed by the Council in each of the 10 standard Federal regions,” and inserting the following: “(by at least 2, but in no case more than 5, regional coordinators employed by the Council, each having responsibility for interaction and coordination of the activities of the Council within the 10 standard Federal regions)”; and

(2) by striking subparagraphs (A) and (B) and inserting the following:

“(A) interpret regulations and assist in the application process for Federal assistance, including grants;

“(B) provide assistance on the ways in which Federal programs, other than those authorized under this Act, may best be coordinated to complement the objectives of this Act;

“(C) develop recommendations and program ideas based on regional specific issues in serving the homeless population; and

“(D) establish a schedule for biennial regional workshops to be held by the Council in each of the 10 standard Federal regions to further carry out and provide the assistance described in subparagraphs (A), (B), and (C) and other appropriate assistance as necessary, of which—

“(i) not less than 5 such workshops shall be held by September 30, 1989; and

“(ii) at least 1 such workshop shall be held in each of the 10 Federal regions every 2 years, beginning on September 30, 1988.”.

SEC. 203. ESTABLISHMENT OF PROGRAM TIMETABLES.

Section 203 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11313) is amended by adding at the end the following new subsection:

“(e) **PROGRAM TIMETABLES.**—Not later than 90 days after the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, the head of each Federal agency that is a member of the Council and responsible for administering a program under this Act shall provide to the Council a timetable regarding program funding availability and application deadlines. The Council shall furnish such information to each State (including the State contact person).”.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

Section 208 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11318) is amended to read as follows:

“SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this title \$1,100,000 for fiscal year 1989 and \$1,200,000 for fiscal year 1990.”.

SEC. 205. EXTENSION OF INTERAGENCY COUNCIL.

Section 209 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11319) is amended by striking “upon the expiration of the 3-year period beginning on the date of the enactment of this Act” and inserting “on October 1, 1990”.

SEC. 206. ENCOURAGEMENT OF STATE INVOLVEMENT.

(a) **IN GENERAL.**—Title II of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11311 et seq.) is amended by adding at the end the following new section:

“SEC. 210. ENCOURAGEMENT OF STATE INVOLVEMENT.

42 USC 11320.

“(a) **STATE CONTACT PERSONS.**—Each State shall designate an individual to serve as a State contact person for the purpose of receiving and disseminating information and communications received from the Council, including the bimonthly bulletin described in section 203(a)(7).

“(b) **STATE INTERAGENCY COUNCILS AND LEAD AGENCIES.**—Each State is encouraged to establish a State interagency council on the homeless or designate a lead agency for the State for the purpose of assuming primary responsibility for coordinating and interacting with the Council and State and local agencies as necessary.”.

(b) **CONFORMING AMENDMENT.**—The table of contents in section 101(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 prec.) is amended by inserting after the item relating to section 209 the following new item:

“Sec. 210. Encouragement of State involvement.”.

TITLE III—FEDERAL EMERGENCY MANAGEMENT FOOD AND SHELTER PROGRAM

SEC. 301. REPORT ON EMERGENCY FOOD AND SHELTER GRANT PROGRAM.

Not later than 6 months after the date of the enactment of this Act, the Director of the Federal Emergency Management Agency shall submit a report to the appropriate committees of the Congress on the emergency food and shelter grant program administered under subtitle B of title III of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11341 et seq.). The report shall include—

(1) proposed legislation for a minimum of 2 alternative statutory formulas incorporating the criteria on which the distribution and disbursement of such grants is based, including utilization of data that reflect the number of long-term unemployed workers in the States involved (including those whose unemployment benefits have run out and those who have been out of work so long they are no longer actively seeking employment); and

(2) supporting evidence for each alternative formula and criteria that explains how each formula would be effective in targeting such grants to the areas in the Nation that have the greatest need.

SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

Section 322 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11352) is amended to read as follows:

“SEC. 322. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this title \$129,000,000 for fiscal year 1989 and \$134,000,000 for fiscal year 1990.”.

TITLE IV—HOUSING ASSISTANCE

Subtitle A—Comprehensive Homeless Assistance Plan

SEC. 401. SUBMISSION OF COMPREHENSIVE PLAN.

(a) ANNUAL SUBMISSION.—Section 401(a)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361(a)(1)) is amended by inserting “annually” after “submits”.

(b) SUBMISSION TO OTHER JURISDICTIONS.—Section 401(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361(a)) is amended—

- (1) by striking “and” at the end of paragraph (1);
- (2) by redesignating paragraph (2) as paragraph (3); and
- (3) by inserting after paragraph (1) the following new paragraph:

“(2) at the time of submission of the comprehensive plan to the Secretary—

“(A) in the case of a State, it also submits a copy of the comprehensive plan to each metropolitan city or urban county that is located in the State and is subject to the requirements of this subsection; and

“(B) in the case of a metropolitan city or urban county, it also submits a copy of the comprehensive plan to the State in which it is located; and”.

SEC. 402. CONTENTS OF COMPREHENSIVE PLAN.

Section 401(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361(b)) is amended—

- (1) in paragraph (3)—
 - (A) by inserting “facilities and” before “services”; and
 - (B) by striking “and” at the end;
- (2) in paragraph (4)—
 - (A) by inserting “facilities and” before “services”; and
 - (B) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

“(5) an identification of the appropriate person or agency to contact in the State, metropolitan city, or urban county regarding information relating to the contents of the comprehensive plan; and

“(6) an assurance that each recipient and project sponsor shall administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.”.

SEC. 403. PERFORMANCE REVIEWS.

Section 401(d)(3) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361(d)(3)) is amended by inserting before the period the following: “or to respond to recommendations made in accordance with paragraph (2) that are received at least 60 days prior to the beginning of the fiscal year”.

State and local
governments.
Urban areas.

State and local
governments.
Urban areas.

SEC. 404. COORDINATION.

Section 401 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361) is amended by adding at the end the following new subsection:

“(g) **COORDINATION.**—If the comprehensive plan submitted by a State contains a designation of a State agency or a State contact person to coordinate homeless assistance efforts in the State, each Federal agency that provides assistance under this Act shall provide to the designated State agency or contact person such information as may be appropriate to facilitate such coordination.”.

State and local
governments.

Subtitle B—Emergency Shelter Grants

SEC. 421. DISTRIBUTION OF ASSISTANCE BY STATES TO PRIVATE NON-PROFIT ORGANIZATIONS.

(a) **IN GENERAL.**—Section 413(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11373(a)) is amended by inserting “and private nonprofit organizations” after “local governments”.

(b) **DISTRIBUTIONS TO NONPROFITS.**—Section 413(c) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11373(c)) is amended by adding at the end the following new sentence: “Any State receiving assistance under this subtitle may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to homeless individuals, if the local government for the locality in which the project is located certifies that it approves of the project.”.

SEC. 422. ESSENTIAL SERVICES.

(a) **AMOUNT PERMITTED.**—Section 414 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374) is amended—

(1) in subsection (a)(2)(B) and in subsection (b), by striking “15” and inserting “20”; and

(2) in subsection (a)(2)(B), by striking “the amount of any assistance to a” and inserting “the aggregate amount of all assistance to a State or”.

(b) **SUPPLEMENTAL USE OF ASSISTANCE.**—Section 414(a)(2)(A) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(A)) is amended by inserting before the semicolon the following: “, or the use of assistance under this subtitle would complement those services”.

SEC. 423. HOMELESSNESS PREVENTION AS AN ELIGIBLE ACTIVITY.

(a) **IN GENERAL.**—Section 414(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)) is amended by adding at the end the following:

“(4) Efforts to prevent homelessness such as financial assistance to families who have received eviction notices or notices of termination of utility services if—

Utilities.

“(A) the inability of the family to make the required payments is due to a sudden reduction in income;

“(B) the assistance is necessary to avoid the eviction or termination of services;

“(C) there is a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and

“(D) the assistance will not supplant funding for preexisting homelessness prevention activities from other sources. Activities under this paragraph shall be treated as ‘essential services’ for the purpose of paragraph (2)(B).”

USC 11374
ote.

(b) **REPORTING REQUIREMENT.**—The Comptroller General of the United States shall conduct a study and report to the Congress not later than 1 year after the date of the enactment of this Act on various programs to prevent homelessness implemented by grantees, with particular focus on the different methods employed by grantees to determine eligibility for homelessness prevention assistance and restrictions or limitations, if any, imposed under such programs. Such report shall include—

(1) an examination of other homelessness prevention programs, including other Federal programs and State and local programs; and

(2) recommendations for such legislation as the Comptroller General determines appropriate, including recommendations on how to prevent homelessness as a result of mortgage foreclosures.

SEC. 424. REQUIRED USE OF BUILDING AS SHELTER.

Section 415(c)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11375(c)(1)) is amended to read as follows:

“(1) it will—

“(A) in the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under this subtitle as a shelter for homeless individuals and families for not less than a 10-year period;

“(B) in the case of assistance involving rehabilitation (other than major rehabilitation or conversion), maintain any building for which assistance is used under this subtitle as a shelter for homeless individuals and families for not less than a 3-year period; or

“(C) in the case of assistance involving solely activities described in paragraphs (2) and (3) of section 414(a), provide services or shelter to homeless individuals and families for the period during which such assistance is provided, without regard to a particular site or structure as long as the same general population is served.”

SEC. 425. AUTHORIZATION OF APPROPRIATIONS.

Section 417 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11377) is amended to read as follows:

“SEC. 417. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this subtitle \$120,000,000 for fiscal year 1989 and \$125,000,000 for fiscal year 1990.”

Subtitle C—Supportive Housing

SEC. 441. AVAILABILITY OF OPERATING AND TECHNICAL ASSISTANCE FOR NEW STRUCTURES.

(a) **DEFINITION OF PROJECT.**—Section 422(7) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(7)) is amended by inserting before the period at the end the following: “or with

respect to which the Secretary provides technical assistance or annual payments for operating costs under this subtitle”.

(b) **OPERATING ASSISTANCE.**—Section 423(a)(3) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)(3)) is amended by inserting after “transitional housing” the following: “(without regard to whether the housing is an existing structure)”.

(c) **TECHNICAL ASSISTANCE.**—Section 423(a)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)(4)) is amended to read as follows:

“(4) Technical assistance in—

“(A) establishing supportive housing in an existing structure;

“(B) operating supportive housing (without regard to whether the housing is an existing structure); and

“(C) providing supportive services to the residents of supportive housing (without regard to whether the housing is an existing structure).”.

SEC. 442. PROJECT SPONSOR.

(a) **IN GENERAL.**—Section 422(8) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(8)) is amended by inserting before the period at the end the following: “or a public housing agency”.

(b) **STATE APPROVALS OF PERMANENT HOUSING FOR HANDICAPPED HOMELESS PERSONS.**—

(1) **PROJECT SPONSOR.**—Section 422(8) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(8)) is amended by striking “the Governor or other chief executive official of a State” and inserting “a State”.

(2) **LETTERS OF PARTICIPATION.**—Section 424(a)(2)(F)(i) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384(a)(2)(F)(i)) is amended by striking “the Governor or other chief executive official of the State” and inserting “the State”.

SEC. 443. MAXIMUM PERIOD OF RESIDENCE IN TRANSITIONAL HOUSING.

Section 422(12)(A) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(12)(A)) is amended in the first sentence by striking “within a reasonable amount of time, as determined by the Secretary” and inserting “within 24 months (or such longer period as the Secretary determines is necessary to facilitate the transition of homeless individuals to independent living)”.

SEC. 444. DEFINITION OF PERMANENT HOUSING.

Section 422(12)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11382(12)(B)) is amended by inserting after the first sentence the following: “The Secretary may waive the limitation contained in the preceding sentence if the applicant demonstrates that—

“(i) local market conditions dictate the development of a larger project; and

“(ii) such development will achieve the neighborhood integration objectives of the program within the context of the affected community.”.

SEC. 445. USE OF ADVANCES TO REPAY DEBT.

(a) **IN GENERAL.**—Section 423(a)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)(1)) is amended by

adding at the end the following new sentence: "The repayment of any outstanding debt owed on a loan made to purchase an existing structure shall be considered to be a cost of acquisition eligible for an advance under this paragraph if the structure was not used as supportive housing prior to the receipt of assistance."

42 USC 11383
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) applies to notifications of awards for grants made under subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act on or after November 1, 1987.

SEC. 446. LIMIT ON GRANTS.

Section 423(a)(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)(2)) is amended by inserting ", in an amount not to exceed \$200,000," after "A grant".

SEC. 447. ELIGIBLE ACTIVITIES.

Section 423(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)) is amended—

Handicapped
persons.

(1) in paragraph (3), by inserting before the period at the end the following: ", and for operating costs for permanent housing for handicapped homeless persons, not to exceed 50 percent of the annual operating costs of such housing for the first year of operation, and not to exceed 25 percent of such costs for the second year of operation"; and

(2) by adding at the end the following:

"A recipient may receive assistance under both paragraphs (1) and (2)."

SEC. 448. EMPLOYMENT ASSISTANCE.

(a) **AUTHORITY TO PROVIDE GRANTS.**—Section 423(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)) is amended by inserting after paragraph (4) the following new paragraph:

"(5) A grant for establishing and operating an employment assistance program for the residents of transitional housing, which shall include—

"(A) employment of residents in the operation and maintenance of the housing; and

"(B) the payment of the transportation costs of residents to places of employment."

(b) **PRIORITY.**—Section 424(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384(b)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following new paragraph:

"(7) in the case of transitional housing, the extent to which the project contains an employment assistance program which meets the program criteria described in section 423(a)(5); and"

SEC. 449. LIMITS ON ADVANCES AND GRANTS.

(a) **IN GENERAL.**—Section 423(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383(a)) is amended by adding at the end the following:

"The Secretary may increase the limit contained in paragraphs (1) and (2) to \$400,000 in areas which the Secretary finds have high acquisition and rehabilitation costs."

(b) **LIMITED NEW CONSTRUCTION AUTHORITY.**—Section 423 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11383) is amended by adding at the end the following:

“(d) **LIMITED NEW CONSTRUCTION AUTHORITY.**—In addition to the purposes described in subsection (a)(1), an advance under such subsection may be used for new construction only if the Secretary finds that the project—

“(1) involves the cooperation of a city and a State university;

“(2) has the land donated by a State university;

“(3) proposes a supportive housing structure of at least 10,000 square feet; and

“(4) proposes a model supportive housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.”.

SEC. 450. SITE CONTROL.

(a) **REQUIREMENT.**—

(1) **IN GENERAL.**—Section 424(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384(a)) is amended by adding at the end the following:

“(3) The Secretary shall require that an application furnish reasonable assurances that the applicant will own or have control of a site for the proposed project not later than 6 months after notification of an award for grant assistance. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for grant assistance, the grant shall be recaptured and reallocated.”.

Grants.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) applies to notifications of awards for grants made under subtitle C of title IV of the Stewart B. McKinney Homeless Assistance Act on or after November 1, 1987.

42 USC 11384
note.

(b) **PRIORITY.**—Section 424(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384(b)) (as amended by section 448 of this subtitle) is further amended—

(1) by striking “and” at the end of paragraph (7);

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following new paragraph:

“(8) the extent to which the applicant or project sponsor has control of the site of the proposed project; and”.

SEC. 451. FLOOD PLAIN RESTRICTIONS.

Section 424 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11384) is amended by adding at the end the following:

“(e) **FLOOD PROTECTION STANDARDS.**—Flood protection standards applicable to housing acquired, rehabilitated, or assisted under this subtitle shall be no more restrictive than the standards applicable under Executive Order No. 11988 (May 24, 1977) to the other programs under this title.”.

SEC. 452. MATCHING REQUIREMENT.

Section 425 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11385) is amended to read as follows:

"SEC. 425. MATCHING FUNDS REQUIREMENTS.

te and local
ernments.

"(a) **IN GENERAL.**—Each recipient shall be required to supplement the amount of assistance provided under paragraphs (1) and (2) of section 423(a) with an equal amount of funds from non-Federal sources. Each State submitting an application for permanent housing for handicapped homeless persons shall certify that it will supplement the amount of assistance provided under paragraphs (1) and (2) of section 423(a) with an equal amount of funds from non-Federal sources.

"(b) **NON-FEDERAL FUNDS.**—For the purpose of this section, the term 'funds from non-Federal sources' includes State or local agency funds, any salary paid to staff to carry out the program of the recipient, any salary paid to residents of transitional housing under an employment assistance program described in section 423(a)(5), the value of the time and services contributed by volunteers to carry out the program of the recipient at a rate determined by the Secretary, and the value of any donated material or building and the value of any lease on a building."

SEC. 453. REPORTS TO CONGRESS.

Section 427 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11387) is amended to read as follows:

"SEC. 427. REPORTS TO CONGRESS.

"The Secretary shall submit annually to the Congress a report summarizing the activities carried out under this subtitle and setting forth the findings, conclusions, and recommendations of the Secretary as a result of the activities. The report shall be submitted not later than 3 months after the end of each fiscal year (6 months in the case of fiscal year 1988)."

SEC. 454. AUTHORIZATION OF APPROPRIATIONS.

Section 428(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11388(a)) is amended to read as follows:

"(a) **IN GENERAL.**—There are authorized to be appropriated to carry out this subtitle \$100,000,000 for fiscal year 1989 and \$105,000,000 for fiscal year 1990."

SEC. 455. REALLOCATIONS.

Section 428 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11388) is amended by adding at the end the following new subsection:

"(d) **REALLOCATIONS.**—If, following the receipt of applications for the final funding round under this subtitle for any fiscal year, any amount set aside for assistance pursuant to subsection (b)(1), (b)(2), or (c) will not be required to fund the approvable applications submitted for such assistance, the Secretary shall reallocate such amount for other assistance pursuant to this subtitle."

Subtitle D—Supplemental Assistance for Facilities To Assist the Homeless

SEC. 461. USE OF ASSISTANCE.

Section 432(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11392(a)) is amended—

(1) in paragraph (1)—

- (A) by striking “or” at the end of subparagraph (A); and
- (B) by adding at the end the following new subparagraph:
“(C) to provide supportive services for the homeless; or”;
- and
- (2) in paragraph (2)—
 - (A) in subparagraph (A), by inserting “operation,” after “renovation,”; and
 - (B) in subparagraph (B), by striking “homeless individuals” and inserting “the homeless”.

SEC. 462. RESERVATION OF FUNDS.

The second sentence of section 432(d) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11392(d)) is amended—

- (1) by inserting “and services” after “facilities” each place it appears; and
- (2) by striking “individuals and” and inserting “individuals or”.

SEC. 463. SITE CONTROL.

(a) **REQUIREMENT.**—Section 432 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11392) is amended—

- (1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and
- (2) by inserting after subsection (d) the following:

“(e) **SITE CONTROL.**—The Secretary shall require that an application furnish reasonable assurances that the applicant will own or have control of a site for the proposed project not later than 6 months after notification of an award for grant assistance. An applicant may obtain ownership or control of a suitable site different from the site specified in the application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for grant assistance, the grant shall be recaptured and reallocated.”.

Grants.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) applies to notifications of awards for grants made under subtitle D of title IV of the Stewart B. McKinney Homeless Assistance Act on or after November 1, 1987.

42 USC 11392 note.

SEC. 464. AUTHORIZATION OF APPROPRIATIONS.

The first sentence of section 434 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11394) is amended to read as follows: “There are authorized to be appropriated to carry out this subtitle \$10,000,000 for fiscal year 1989 and \$11,000,000 for fiscal year 1990.”.

Subtitle E—Miscellaneous Provisions

SEC. 481. SECTION 8 ASSISTANCE FOR SINGLE ROOM OCCUPANCY DWELLINGS.

(a) **INCREASE IN BUDGET AUTHORITY.**—Section 441(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401(a)) is amended to read as follows:

“(a) **INCREASE IN BUDGET AUTHORITY.**—The budget authority available under section 5(c) of the United States Housing Act of 1937 for assistance under section 8(e)(2) of such Act is authorized to be

increased by \$50,000,000 on or after October 1, 1988, and by \$50,000,000 on or after October 1, 1989.”.

(b) **REHABILITATION OF EFFICIENCY UNITS.**—Section 441(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401(b)) is amended by inserting before the period at the end the following: “, except that amounts made available under this section may be used in connection with the moderate rehabilitation of efficiency units if the building owner agrees to pay the additional cost of rehabilitating and operating such units.”.

(c) **FIRE AND SAFETY IMPROVEMENTS.**—Section 441(d) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401(d)) is amended by adding at the end the following new sentence: “For purposes of this subsection, the term ‘major spaces’ means hallways, large common areas, and other areas specified in local fire, building, or safety codes.”.

(d) **ANNUAL ADJUSTMENT OF COST LIMITATION.**—

(1) **ADJUSTMENT REQUIRED.**—Section 441(e) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401(e)) is amended by adding at the end the following new paragraph:

“(3) The Secretary of Housing and Urban Development shall increase the limitation in paragraph (1) on October 1 of each year by an amount necessary to take into account increases in construction costs during the previous 12-month period.”.

(2) **EFFECTIVE DATE.**—The first increase under the amendment made by paragraph (1) shall be effective with respect to assistance provided on or after October 1, 1988.

42 USC 11401
note.

SEC. 482. ADMINISTRATIVE PROVISIONS.

(a) **IN GENERAL.**—Subtitle E of title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401 et seq.) is amended by adding at the end the following new section:

42 USC 11402.

“SEC. 443. ADMINISTRATIVE PROVISIONS.

“The provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 shall apply to assistance and projects under this title.”.

(b) **CONFORMING AMENDMENT.**—The table of contents in section 101(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 prec.) is amended by inserting after the item relating to section 442 the following new item:

“Sec. 443. Administrative provisions.”.

42 USC 11301
note.

SEC. 483. REPORT ON EFFECT OF RENT CONTROL ON HOMELESSNESS.

(a) **IN GENERAL.**—The Secretary of Housing and Urban Development shall submit to the Congress a report evaluating the impact of local housing rent controls and regulations on the rate of homelessness, and on the development, supply, availability, and affordability of housing, in major cities in the United States.

(b) **SPECIFIC REQUIREMENTS.**—The report required in this section shall include—

(1) a listing of localities that have housing rent controls or regulations, the nature and extent of such controls or regulations, and an assessment of the variance of such controls or regulations among localities;

(2) an evaluation of the impact of such controls or regulations on the development, supply, and growth of affordable rental housing for lower income families, including an accounting of

any increase or decrease in the supply of rental units that has occurred during the period of such controls or regulations;

(3) an evaluation of the benefits and effectiveness of such controls or regulations in ensuring affordable rents for lower income families;

(4) an evaluation of the relationship between the existence of such controls or regulations and Federal subsidized housing assistance in the locality, including whether such controls or regulations necessitate more or less Federal housing aid;

(5) an evaluation of the impact on the resident population of removing such controls or regulations, including an assessment of potential rent increases on lower income residents, the options available to localities to mitigate any such increases, the potential increased demand for Federal subsidized housing assistance, and the impact on fair market rents in the locality;

(6) an evaluation of the effect of such controls or regulations on commercial and nonrental housing development in the locality;

(7) a demographic review of the income levels of the population in controlled or regulated units;

(8) an evaluation of the effect of such controls or regulations on the quality of controlled or regulated units;

(9) an evaluation of compliance with such controls or regulations by owners, management, and residents of controlled or regulated units;

(10) an evaluation of the administration and enforcement of such controls or regulations by local officials;

(11) an evaluation of the impact of factors other than rent controls or regulations that affect the development of affordable housing in the locality;

(12) a comparison to other localities that have not instituted such controls or regulations on the supply, development, availability, and affordability of rental housing; and

(13) any other related issue the Secretary of Housing and Urban Development determines to be of interest or significance.

(c) **DEADLINE.**—The Secretary of Housing and Urban Development shall submit the report required in this section within 12 months after the date of the enactment of this Act.

SEC. 484. REPORT ON ALLOCATION FORMULAS.

The Secretary of Housing and Urban Development shall—

(1) examine whether an alternative system of distributing funds under title IV of the Stewart B. McKinney Homeless Assistance Act would be feasible to ensure that the funds are provided to the jurisdictions with the greatest need of assistance for the homeless; and

(2) not later than March 1, 1989, transmit to the Congress a report on such examination.

SEC. 485. REGULATIONS.

Not later than 60 days after the date of the enactment of this Act, the Secretary of Housing and Urban Development or other Federal entity involved shall by notice establish such requirements as may be necessary to carry out the amendments made by titles I through IV and by section 501(2)(B). The Secretary or other Federal entity involved shall issue regulations based on the notice not later than 12 months after the date of the enactment of this Act.

TITLE V—IDENTIFICATION AND USE OF SURPLUS FEDERAL PROPERTY

SEC. 501. IDENTIFICATION AND USE OF UNUTILIZED AND UNDER UTILIZED PUBLIC BUILDINGS AND PROPERTY.

Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) is amended—

(1) by inserting “UNUTILIZED AND” before “UNDERUTILIZED” in the heading of such section;

(2) in subsection (a)—

(A) by inserting “unutilized or” before “underutilized”;

(B) by inserting before “shall identify” a comma and “within 2 months after collecting such information,”; and

(3) in subsection (b)—

(A) in paragraph (1), by inserting after “agency’s need” the following: “or to make the property available, on an interim basis, for use as facilities to assist the homeless”; and

(B) in paragraph (2), by inserting after “be declared excess” the following: “or made available on an interim basis for use as facilities to assist the homeless”; and

(4) in subsection (d)—

(A) by striking out “BY LEASE” from the heading of such subsection;

(B) by striking out paragraph (1) and inserting the following:

“(1) The ownership of buildings and property made available under this section shall not be transferred from the Federal Government. Property identified pursuant to subsection (a)—

“(A) which has been designated as surplus property, may be made available under this section only through the use of leases for at least 1 year; or

“(B) which has not been so designated, may be made available for interim use by lease for at least 1 year or by permit.”; and

(C) in paragraph (2), by striking out “To permit leases of surplus Federal buildings and other real property under this section,” and inserting in lieu thereof the following: “With respect to property identified under subsection (a) which has been designated as surplus property,”.

TITLE VI—REVISION AND EXTENSION OF PROGRAMS OF HEALTH CARE FOR THE HOMELESS

Subtitle A—Categorical Grants for Primary Health Services and Substance Abuse Services

SEC. 601. INCREASE IN REQUIRED AMOUNT OF MATCHING FUNDS AND MODIFICATION IN ELIGIBILITY FOR WAIVER WITH RESPECT TO MATCHING FUNDS.

(a) **INCREASE IN REQUIRED AMOUNT.**—Section 340(e)(1)(A) of the Public Health Service Act (42 U.S.C. 256(e)(1)(A)) is amended—

(1) in clause (i), by striking “under the grant; and” and inserting the following: “for the first fiscal year of payments under the grant and 66⅔ percent of the costs of providing such services for any subsequent fiscal year of payments under the grant; and”; and

(2) in clause (ii), by striking “Federal funds” and all that follows and inserting the following: “Federal funds provided for the first fiscal year of payments under the grant and not less than \$1 (in cash or in kind under such subparagraph) for each \$2 of Federal funds provided for any subsequent fiscal year of payments under the grant.”

(b) **EFFECTIVE DATE FOR INCREASE.**—The amendment made by subsection (a) shall take effect October 1, 1989. 42 USC 256 note.

(c) **MODIFICATION IN ELIGIBILITY FOR WAIVER.**—Section 340(e)(2) of the Public Health Service Act (42 U.S.C. 256(e)(2)) is amended to read as follows:

“(2) The Secretary may waive the requirement established in paragraph (1)(A) if the applicant involved is a nonprofit private entity and the Secretary determines that it is not feasible for the applicant to comply with such requirement.”.

SEC. 602. ESTABLISHMENT OF AUTHORITY FOR TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.

(a) **IN GENERAL.**—Section 340 of the Public Health Service Act (42 U.S.C. 256) is amended—

(1) by redesignating subsections (h) through (q) as subsections (i) through (r), respectively; and

(2) by adding after subsection (g) the following new subsection:

“(h) **TEMPORARY CONTINUED PROVISION OF SERVICES TO CERTAIN FORMER HOMELESS INDIVIDUALS.**—If any grantee under subsection (a) has provided services described in subsection (f) or (g) to a homeless individual, any such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 340(d)(1) of the Public Health Service Act (42 U.S.C. 256(d)(1)) is amended—

(A) in subparagraph (C), by striking “(h)” and inserting “(i)”;

- (B) in subparagraph (D), by striking “(i)” and inserting “(j)”;
- (C) in subparagraph (E), by striking “(j)” and inserting “(k)”;
- (D) in subparagraph (F), by striking “(k)” and inserting “(l)”.

(2) Section 332(a)(3) of the Public Health Service Act (42 U.S.C. 254e(a)(3)) is amended by striking “340(q)(2)” and inserting “340(r)”.

(3) Section 536(1) of the Public Health Service Act (42 U.S.C. 290cc-36(1)) is amended by striking “340(q)(2)” and inserting “340(r)”.

SEC. 603. CLARIFICATION WITH RESPECT TO CERTAIN PROVISIONS.

(a) **DEFINITION OF HOMELESS INDIVIDUAL.**—Section 340(r)(2) of the Public Health Service Act (as redesignated in section 602(a)(1) of this title) is amended by striking “living accommodations,” and inserting “living accommodations and an individual who is a resident in transitional housing.”.

(b) **PROVISION OF TECHNICAL ASSISTANCE.**—Section 340(o)(2) of the Public Health Service Act (as redesignated in section 602(a)(1) of this title) is amended by striking “(p)(1),” and inserting “(q)(1) for a fiscal year,”.

SEC. 604. AUTHORIZATION OF APPROPRIATIONS.

Section 340(q)(1) of the Public Health Service Act (as redesignated in section 602(a)(1) of this title) is amended by striking “There are authorized” and all that follows and inserting the following: “There are authorized to be appropriated to carry out this section \$61,200,000 for fiscal year 1989, \$63,600,000 for fiscal year 1990, and \$66,200,000 for fiscal year 1991.”.

Subtitle B—Block Grant for Community Mental Health Services

SEC. 611. AUTHORIZATION OF APPROPRIATIONS AND CONTINGENT CONVERSIONS TO CATEGORICAL PROGRAM.

(a) **IN GENERAL.**—Section 535 of the Public Health Service Act (42 U.S.C. 290cc-35) is amended to read as follows:

“FUNDING

“SEC. 535. (a) **AUTHORIZATION OF APPROPRIATIONS.**—For the purpose of carrying out this part, there are authorized to be appropriated \$35,000,000 for each of the fiscal years 1989 and 1990 and such sums as may be necessary for fiscal year 1991.

“(b) **EFFECT OF INSUFFICIENT APPROPRIATIONS FOR MINIMUM ALLOTMENTS.**—

“(1) If the amounts made available pursuant to subsection (a) are insufficient for providing each State with an allotment under section 521(a) of not less than \$150,000, the Secretary shall, from such amounts as are made available pursuant to such subsection, make grants to the States for providing to homeless individuals the mental health services described in section 524.

State and local
governments.

“(2) Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.”.

(b) **FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT.**—Section 529 of the Public Health Service Act (42 U.S.C. 290cc-29) is amended to read as follows:

“CONVERSION TO STATE CATEGORICAL PROGRAM IN EVENT OF FAILURE OF STATE WITH RESPECT TO EXPENDING ALLOTMENT

“SEC. 529. (a) IN GENERAL.—Subject to subsection (c), the Secretary shall, from amounts described in subsection (b), make grants to public and nonprofit private entities for the purpose of providing to homeless individuals the mental health services described in section 524.

“(b) DESCRIPTION OF FUNDS.—The amounts referred to in subsection (a) are any amounts made available in appropriations Acts for allotments under section 521(a) that are not allotted under such section to a State as a result of—

“(1) the failure of the State to submit an application under section 522;

“(2) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

“(3) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

“(c) REQUIREMENT OF PROVISION OF SERVICES IN CERTAIN STATES.—With respect to grants under subsection (a), amounts made available pursuant to subsection (b) as a result of the State involved shall be available only for grants to provide services in such State.”.

SEC. 612. ELIGIBILITY OF TERRITORIES.

(a) **DEFINITION OF STATE.**—Section 536(3) of the Public Health Service Act (42 U.S.C. 290cc-36(3)) is amended by striking “Columbia,” and all that follows and inserting the following: “Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.”.

(b) **MINIMUM ALLOTMENT.**—Section 528(a)(1) of the Public Health Service Act (42 U.S.C. 290cc-28(a)(1)) is amended to read as follows:

“(1) \$275,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico and \$50,000 for each of Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and”.

District of
Columbia.

SEC. 613. TECHNICAL AND CONFORMING AMENDMENTS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended—

(1) in section 521(a), by amending the first sentence to read as follows: “The Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 528.”;

42 USC
290cc-21.

(2) in section 541(a)(4), by striking “522” and inserting “543”;

42 USC 290dd.

(3) in section 545(d), by striking “526” and inserting “547”;

42 USC 290ee.

and

(4) in section 546(a)(4), by striking “521” and inserting “542”.

42 USC 290ee-1.

Subtitle C—Authorization of Appropriations for Community Demonstration Projects

SEC. 621. MENTAL HEALTH SERVICES FOR HOMELESS INDIVIDUALS WITH CHRONIC MENTAL ILLNESS.

The first sentence of section 612(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 290aa-3 note) is amended to read as follows: "For payments pursuant to section 504(f) of the Public Health Service Act, there are authorized to be appropriated \$11,000,000 for fiscal year 1989, \$11,500,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991, in addition to any other amounts authorized to be appropriated for such payments for each of such fiscal years."

SEC. 622. ALCOHOL AND DRUG ABUSE TREATMENT OF HOMELESS INDIVIDUALS.

Section 513(b) of the Public Health Service Act (42 U.S.C. 290bb-2(b)) is amended to read as follows:

"(b) There are authorized to be appropriated to carry out section 512(c) \$14,000,000 for fiscal year 1989, \$17,000,000 for fiscal year 1990, and such sums as may be necessary for fiscal year 1991."

Subtitle D—General Provisions

42 USC 256 note.

SEC. 631. EFFECTIVE DATES.

The amendments made by subsection (a) of section 601 shall take effect in accordance with subsection (b) of such section. The amendments otherwise made by this title shall take effect October 1, 1988, or upon the date of the enactment of this Act, whichever occurs later.

TITLE VII—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAMS

Subtitle A—Homeless Assistance Programs

SEC. 701. ADULT EDUCATION FOR THE HOMELESS.

(a) GENERAL AUTHORITY.—

(1) IMPLEMENTATION.—Section 702(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421(a)) is amended by striking "to develop a plan and implement a program" and inserting the following: "to implement, either directly or through contracts and grants, a program".

(2) CONFORMING AMENDMENTS.—

(A) SECTION HEADING.—The heading of section 702 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421) is amended by striking "STATEWIDE" and inserting "STATE".

(B) TABLE OF CONTENTS.—The item relating to section 702 in the table of contents in section 101(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 prec.) is amended to read as follows:

Contracts.
Grants.

"Sec. 702. State literacy initiatives."

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Section 702(c)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421(c)(1)) is amended to read as follows:

"(1) There is authorized to be appropriated \$10,000,000 for each of the fiscal years 1989 and 1990 for the adult literacy and basic skills remediation programs authorized by this section."

(c) **DEFINITION OF STATE.**—Section 702(d) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421(d)) is amended—

(1) by striking "and"; and

(2) by inserting before the period at the end the following: "the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands".

SEC. 702. EDUCATION FOR HOMELESS CHILDREN AND YOUTH.

(a) **GRANTS FOR STATE ACTIVITIES.**—

(1) **ALLOCATION.**—Section 722(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(b)) is amended by inserting before the period at the end the following: "and 0.1 percent of the amount appropriated for each fiscal year shall be allocated by the Secretary among the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands". Territories, U.S.

(2) **TECHNICAL AMENDMENT.**—Section 722(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(b)) is amended by striking "section 111" and all that follows through "of 1981)" and inserting "section 1005 of the Elementary and Secondary Education Act of 1965".

(3) **DATA GATHERING.**—Section 722(d)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(d)(1)) is amended by inserting "annually" before "gather".

(4) **REPORTS.**—Section 722(d)(3) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(d)(3)) is amended to read as follows:

"(3) prepare and submit to the Secretary not later than December 31 of each year a report on the data gathered pursuant to paragraph (1)."

(5) **AUTHORIZATION OF APPROPRIATIONS.**—Section 722(g)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11432(g)(1)) is amended to read as follows:

"(1) There is authorized to be appropriated to carry out this section \$5,000,000 for each of the fiscal years 1989 and 1990."

(b) **EXEMPLARY GRANTS AND DISSEMINATION OF INFORMATION.**—Section 723(f) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11433(f)) is amended to read as follows:

"(f) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$2,500,000 for each of the fiscal years 1989 and 1990."

(c) **DEFINITION OF STATE.**—Section 725(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11435(2)) is amended—

(1) by striking "and"; and

(2) by inserting before the period at the end the following: "the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands".

SEC. 703. JOB TRAINING FOR THE HOMELESS.

(a) **DEFINITION OF STATE.**—Section 737(5) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11447(5)) is amended—

(1) by striking “and” and inserting a comma; and

(2) by inserting before the period at the end the following: “, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands”.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Section 739(a)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11449(a)(1)) is amended to read as follows:

“(1) There is authorized to be appropriated to carry out this subtitle \$13,000,000 for each of the fiscal years 1989 and 1990, of which amount \$2,200,000 for each fiscal year shall be available only to carry out section 738.”.

(c) **RATABLE REDUCTIONS.**—Section 739(a)(2) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11449(a)(2)) is amended—

(1) by striking “in fiscal year 1988” and inserting “for any fiscal year”; and

(2) by striking “\$12,000,000” and inserting “the amount authorized in paragraph (1)”.

SEC. 704. EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM.

(a) **ALLOCATION OF GRANTS.**—The second sentence of section 752(a) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11462(a)) is amended to read as follows: “Such grants shall be allocated to the States (as defined in section 673 of such Act) in accordance with the formulas set forth in subsections (a) and (b) of section 674 of such Act.”.

(b) **PROGRAM REQUIREMENTS.**—

(1) **ADDITIONAL ELIGIBLE USE OF FUNDS.**—Section 753(c) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11463(c)) is amended by adding at the end the following new paragraph:

“(4) Provision of assistance to any individual who has received a notice of foreclosure, eviction, or termination of utility services, if—

“(A) the inability of the individual to make mortgage, rental, or utility payments is due to a sudden reduction in income;

“(B) the assistance is necessary to avoid the foreclosure, eviction, or termination of utility services; and

“(C) there is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.”.

(2) **MAXIMUM AMOUNT AVAILABLE FOR ADDITIONAL ELIGIBLE USE.**—Section 753(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11463(b)) is amended—

(A) by striking “and” at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting “; and”;

(C) by adding at the end the following new paragraph:

“(4) not more than 25 percent of the amounts received will be used for the purpose described in subsection (c)(4).”.

(c) **TIMELY AWARDING OF FUNDS.**—

State and local
governments.

Utilities.

(1) **60-DAY REQUIREMENT FOR AWARDED FUNDS.**—Section 753(b)(1)(A) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11463(b)(1)(A)) is amended in the matter preceding clause (i) by inserting after “receives” the following: “, by not later than 60 days after such receipt,”.

(2) **COMPLIANCE WITH 60-DAY REQUIREMENT.**—Section 753 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11463) is amended by adding at the end the following new subsection:

“(d) **COMPLIANCE WITH 60-DAY REQUIREMENT.**—It shall be left solely to the discretion of the Secretary to enforce the 60-day requirement specified in subsection (b)(1)(A).”.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—Section 754 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11464) is amended to read as follows:

“SEC. 754. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated to carry out this subtitle \$42,000,000 for each of the fiscal years 1989 and 1990.”.

SEC. 705. TECHNICAL AMENDMENTS TO OLDER AMERICANS ACT OF 1965.

The Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) is amended—

(1) in section 102—

42 USC 3002.

(A) by redesignating paragraphs (8) and (9), as added by section 146(a) of the Older Americans Act Amendments of 1987 (Public Law 100-175; 101 Stat. 950), as paragraphs (10) and (11), respectively; and

(B) by redesignating paragraph (8), as added by section 182(b)(1)(B) of the Older Americans Act Amendments of 1987 (Public Law 100-175; 101 Stat. 964), as paragraph (12);

(2) in section 204(a)(1), by inserting a comma after “minorities”;

42 USC 3015.

(3) in section 301(a), by striking “Hawaiian organizations,” and inserting “Hawaiian organizations,”;

42 USC 3021.

(4) in section 305—

42 USC 3025.

(A) in subsection (a)(1)(E), by striking “such areas,” and inserting “such areas,”; and

(B) in subsection (d), by redesignating subparagraphs (A), (B), (C), and (D) as paragraphs (1), (2), (3), and (4), respectively;

(5) in section 306(a)(1), by striking “such area,” and inserting “such area,”;

42 USC 3026.

(6) in section 307(a)(3)(A), by striking “; and” and inserting a period;

42 USC 3027.

(7) in section 411(c), by striking “disease and and” and inserting “disease and”;

42 USC 3031.

(8) in section 422(b)—

42 USC 3035a.

(A) in paragraph (1), by striking “Alzheimers’ disease and other neurological and organic disorders of the Alzheimers’ type” and inserting “Alzheimer’s disease and related disorders with neurological and organic brain dysfunction”; and

(B) in paragraph (9)(B), by striking “ACTION” and inserting “the ACTION Agency”; and

(9) in section 507(3), by adding “; and” at the end.

42 USC 3056e.

Jobs for
Employable
Dependent
Individuals
Act.
29 USC 1501
note.

Subtitle B—Job Training Partnership Act

SEC. 711. SHORT TITLE.

This subtitle may be cited as the “Jobs for Employable Dependent Individuals Act”.

SEC. 712. INCENTIVE BONUS ENTITLEMENT FOR EMPLOYABLE DEPENDENT INDIVIDUALS.

(a) **AMENDMENTS TO JTPA.**—The Job Training Partnership Act (29 U.S.C. 1501 et seq.) (hereinafter in this title referred to as the “Act”) is amended—

29 USC 49.

(1) by redesignating title V and all references thereto as title VI,

29 USC 49a, 49b,
49d–49j, 49l,
49l–1 and note;
42 USC 632, 633,
602; 29 USC
1504.
State and local
governments.

(2) by redesignating sections 501, 502, 503, and 504 as sections 601, 602, 603, and 604, respectively, and

(3) by inserting after title IV the following new title:

“TITLE V—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS INCENTIVE BONUS PROGRAM

29 USC 1791.

“SEC. 501. STATEMENT OF PURPOSE.

“It is the purpose of this title to entitle each State to the payment of a bonus for the successful job placement of certain employable dependent individuals.

29 USC 1791a.

“SEC. 502. DEFINITIONS.

“For the purpose of this title—

“(1) the term ‘welfare assistance’ means—

“(A) cash payments made pursuant to part A of title IV of the Social Security Act (relating to the aid to families with dependent children program);

“(B) general welfare assistance to Indians, as provided pursuant to the Act of November 2, 1921 (25 U.S.C. (13)), commonly referred to as the Snyder Act; or

“(C) cash assistance and medical assistance for refugees made available pursuant to section 412(e) of the Immigration and Nationality Act;

“(2) the term ‘disability assistance’ means benefits offered pursuant to title XVI of the Social Security Act (relating to the supplemental security income program);

“(3) the term ‘long-term recipient’ means an individual who has received the benefits described in paragraphs (1) and (2) for 24 months during the 28-month period immediately preceding application for programs offered under this title;

“(4) the term ‘continuous employment’ means gainful employment under which wages or salaries are reportable for unemployment insurance purposes, and such wages or salaries are earned during a total of 4 out of 5 consecutive calendar quarters;

“(5) the term ‘supported employment’ has the meaning given such term by section 7(18) of the Rehabilitation Act of 1973; and

“(6) the term ‘Federal contribution’ means the amount of the Federal component of cash payments to individuals within the

participating State under the programs described in this section, including part A of title IV of the Social Security Act.

C. 503. ELIGIBILITY FOR INCENTIVE BONUSES.

29 USC 1791b.

(a) **IN GENERAL.**—An individual shall be eligible to be counted for purpose of this title if—

“(1) the individual is—

“(A) an eligible long-term recipient described in subsection (b);

“(B) an eligible young recipient described in subsection (c);

“(C) an eligible blind or disabled recipient described in subsection (d); or

“(D) an eligible young blind or disabled recipient described in subsection (e); and

“(2) the individual has met the requirements of section 504.

(b) **LONG-TERM RECIPIENT.**—An eligible long-term recipient is an individual who—

“(1) is a long-term recipient of welfare assistance;

“(2) is the head of a household; and

“(3) had no marketable or significant work experience during the year preceding determination of eligibility for programs under this Act.

(c) **YOUNG RECIPIENT.**—An eligible young recipient is an individual who—

“(1) is receiving welfare assistance at the time determination of eligibility is made for programs under this Act;

“(2) is the head of a household;

“(3) has not attained 22 years of age;

“(4) has not completed secondary school or its equivalent; and

“(5) had no marketable or significant work experience during the year preceding determination of eligibility for programs under this Act.

(d) **BLIND OR DISABLED RECIPIENT.**—An eligible blind or disabled recipient is an individual who—

“(1) is blind or disabled;

“(2) is a long-term recipient of disability assistance; and

“(3) had no marketable or significant work experience during the year preceding determination of eligibility for programs offered under this Act.

(e) **YOUNG BLIND OR DISABLED RECIPIENT.**—An eligible young blind or disabled recipient is an individual who—

“(1) is blind or disabled;

“(2) is receiving disability assistance at the time determination of eligibility is made for programs under this Act;

“(3) has not attained 22 years of age; and

“(4) had no marketable or significant work experience during the year preceding such determination of eligibility.

C. 504. ADDITIONAL ELIGIBILITY REQUIREMENTS.

29 USC 1791c.

(a) **IN GENERAL.**—An individual described in section 503 may not be considered eligible to be counted for the purpose of payment of an incentive bonus under this title unless such individual—

“(1) has successfully participated in education, training, or other activities offered under this Act;

“(2) has been placed in (A) unsubsidized, continuous employment or (B) supported employment following such participation;

“(3) receives from such employment a wage or income which is greater than or equal to such individual’s placement bonus base; and

“(4) no longer receives cash benefits provided under the assistance programs described in paragraphs (1) and (2) of section 502, unless receipt of such benefits—

“(A) is limited to 1 calendar quarter (or an equivalent period) during the 5 calendar quarters used to determine continuous employment; and

“(B) is caused by a termination of employment due to—

“(i) a layoff or permanent closure of a plant or facility;

“(ii) a relocation of Federal facilities; or

“(iii) a natural disaster.

“(b) **QUALIFIED EARNINGS.**—An individual shall be considered to be earning a wage or income which meets the requirements of subsection (a)(3) if, during a period of continuous employment, the individual earns an income reportable for unemployment insurance purposes and does not receive cash benefits under the programs described in section 502.

“(c) **EDUCATIONAL REQUIREMENTS.**—An individual described in section 503 (c) or (e) shall be considered to have met the requirements of subsection (a)(1) if the individual no longer receives welfare assistance and—

“(1) reenrolls in secondary school or its equivalent and matriculates to the next grade level or its equivalent within 1 year of enrollment;

“(2) enrolls in an accredited vocational or technical school not less than full time and is making satisfactory progress in a course of study which can reasonably be expected to lead to employment; or

“(3) obtains the equivalent of a secondary school diploma within 12 months following the individual’s determination of eligibility for programs offered under this title.

29 USC 1791d.

“SEC. 505. AMOUNT OF INCENTIVE BONUS.

“(a) **IN GENERAL.**—The amount of the incentive bonus paid to each State shall be equal to the sum of—

“(1) 75 percent of the placement bonus base for each successful placement in employment of an individual described in section 503;

“(2) 75 percent of the placement bonus base for the second continuous year of such employment; and

“(3) 75 percent of the placement bonus base for the third continuous year of such employment,

in excess of the number of such placements made in program year 1987 or such other base period as provided by agreement between the Governor and the Secretary.

“(b) **PLACEMENT BONUS BASE FOR PURPOSES OF SECTION 503 (b) AND (c).**—For the purpose of this section, the placement bonus base—

“(1) for an individual who qualifies under section 503(b) is equal to the sum of the Federal contribution to amounts received by the individual and the family of such individual under a State plan approved under part A of title IV of the Social Security Act, relating to aid to families with dependent children, or under section 412(e) of the Immigration and Nationality Act, relating to cash assistance and medical assistance to

refugees, or both, for the 2 fiscal years prior to the determination made under section 503 divided by 2; and

“(2) for an individual who qualifies under section 503(c) shall be the annual amount to which such individual would have been entitled for 1 year at the time of the determination of eligibility of the individual, if such individual has not received the benefits described in section 502(1)(A) for the prior year, under part A of title IV of the Social Security Act, relating to the aid to families with dependent children program, or section 412(e) of the Immigration and Nationality Act relating to cash assistance and medical assistance to refugees.

(C) PLACEMENT BONUS BASE FOR PURPOSES OF SECTION 503 (d) AND

—For the purpose of this section, the placement bonus base—

“(1) for an individual who qualifies under section 503(d) is equal to the sum of the Federal contribution to amounts received by the individual under title XVI of the Social Security Act relating to supplemental security income for the 2 fiscal years prior to the determination made under section 503 divided by 2; and

“(2) for an individual who qualifies under section 503(e) shall be the annual amount to which such individual would have been entitled for 1 year at the time of the determination of eligibility of the individual, if such individual has not received the benefits described in section 502(2) for the prior year under title XVI of the Social Security Act, relating to supplemental security income.

SEC. 506. APPLICATIONS AND VERIFICATION REQUIRED.

29 USC 1791e.

(a) NOTICE OF INTENT TO PARTICIPATE.—Any State seeking to participate in the incentive bonus program established under this title shall notify the Secretary of its intent to do so not later than 30 days before the beginning of its first program year of participation.

(b) APPLICATION.—(1) Any State seeking to receive an incentive bonus under this title shall submit an application to the Secretary. Each application shall contain or be accompanied by such information and assurances as the Secretary may reasonably require in order to ensure compliance with this title. Each application shall contain, at a minimum—

“(A) the placement bonus base for eligible individuals who serve to qualify the State for an incentive bonus; and

“(B)(i) a brief description of the unsubsidized employment or supported employment of such individuals; or

“(ii) a description of participation in educational activities, as permitted under section 504, by such individuals.

(2) The application to participate in the incentive bonus program shall be submitted to the Secretary according to a schedule established by the Secretary in order to facilitate and expedite the processing, verification, and prompt payment of incentive bonuses.

(c) NOTICE OF APPROVAL OR DENIAL.—The Secretary shall inform the State within 60 days after receipt of the application as to whether or not its application has been approved. The Secretary may not approve an application for payment of an incentive bonus without adequately verifying the accuracy of the information contained in the application. There shall be a rebuttable presumption that an individual is eligible to be counted for the purpose of payment of an incentive bonus under this title. When appropriate, the Secretary

may use a sampling methodology for such verifications in a manner approved by the Comptroller General of the United States.

"(d) **SERVICE DELIVERY AREA PARTICIPATION.**—Participation by a State in the incentive bonus program established under this title shall not prevent any service delivery area within the State from refusing to participate in such program.

29 USC 1791f.

"SEC. 507. PAYMENTS.

"(a) **IN GENERAL.**—For each program year for which funds are appropriated to carry out this title, the Secretary shall pay to each participating State the amount that State is eligible to receive under this section.

"(b) **RATABLE REDUCTIONS.**—If the amount so appropriated is not sufficient to pay to each State the amount each State is eligible to receive, the Secretary shall ratably reduce the amount paid to each State.

"(c) **RATABLE INCREASES.**—If any additional amount is made available for carrying out this title for any program year after the application of the preceding sentence, such additional amount shall be allocated among the States by increasing such payments in the same manner as they were reduced, except that no such State shall be paid an amount which exceeds the amount which it is eligible to receive under this section.

29 USC 1791g.

"SEC. 508. USE OF INCENTIVE BONUS FUNDS.

"(a) **USE OF INCENTIVE BONUS FUNDS.**—After submission and approval of an application for an incentive bonus payment and before receipt of such payment, the Governor of such State may reserve from State funds an amount equal to the amount of a bonus incentive requested in the application for the purpose of making expenditures in accordance with this title. Bonus payments received thereafter may be used for reimbursement of such expenditures.

"(b) **LIMITATIONS.**—(1)(A) During any program year, the Governor may use an amount not to exceed 15 percent of the State's total bonus payments or amounts reserved under subsection (a) for administrative costs incurred under this title, including data and information collection and compilation, recordkeeping, or the preparation of applications for incentive bonuses.

Contracts.

"(B) The amount of incentive bonus payments or the amounts reserved under subsection (a) which remain after the deduction of administrative expenses under paragraph (1) shall be distributed to service delivery areas within the State in accordance with an agreement between the Governor and representatives of such areas. Such agreement shall reflect an equitable method of distribution which is based on the degree to which the efforts of such area contributed to the State's qualification for an incentive bonus payment under this title.

"(2)(A) Subject to subparagraph (B), a maximum of 10 percent of the amounts received under this title in any program year by each service delivery area may be used for the administrative costs of establishing and maintaining systems necessary for operation of programs under this title, including incentive payments described in subsection (c), technical assistance, data and information collection and compilation, management information systems, post-program followup activities, and research and evaluation activities. The balance of funds not so expended shall be used for activities similar to activities described in section 204.

“(B) If a service delivery area determines that administrative costs under this title will exceed the 10 percent administrative allocation, such area may use an additional 5 percent allocation of bonus payments or amounts reserved under subsection (a) for such activities if such area demonstrates to the Governor that the administering agency in the area needs additional funds to continue administrative activities under this title.

“(C) INCENTIVE PAYMENTS TO SERVICE PROVIDERS.—Each service delivery area may make incentive payments to service providers within its service delivery area, including participating State and local agencies, and community-based organizations, that demonstrate effectiveness in delivering employment and training services to individuals such as those described in section 503.

“(D) APPLICATION OF SECTION RELATING TO ADMINISTRATIVE ADJUDICATIONS.—Section 166 of this Act, relating to administrative adjudication, shall apply to the distribution of incentive bonus payments under this section.

“SEC. 509. INFORMATION AND DATA COLLECTION.

29 USC 1791h.

“(a) TECHNICAL ASSISTANCE.—In order to facilitate the collection, exchange, and compilation of data and information required by this title, the Secretary shall, within 90 days after the date of enactment of this title, begin providing, on an ongoing basis, technical assistance to the States. Such assistance shall include, at a minimum, cost-effective methods for using State and Federal records to which the Secretary has lawful access.

Records.

“(b) REGULATIONS.—The Secretary, the Secretary of Health and Human Services, and the Secretary of the Interior jointly shall issue regulations regarding the sharing, among States participating in the programs under this title, of the data and information necessary to fulfill the requirements of this title. Such regulations shall provide for—

“(1) the maintenance of confidentiality of the information so shared, in accordance with Federal and State privacy laws, and

Classified information.

“(2) penalties for any violation of such regulations.

“(c) ANNUAL SURVEY.—The Secretary shall conduct an annual survey of States participating in programs under this title and shall report to the Congress concerning—

Reports.

“(1) the success of such States in gathering the data and information required under this title; and

“(2) methods for improving and refining the ability of such States to gather the data and information required under this title.

“SEC. 510. START-UP COSTS.

29 USC 1791i.

“(a) APPLICATION.—Before notifying the Secretary of an intent to participate in the incentive bonus program established under this title, a State may apply to the Secretary for financial assistance in accordance with this section. Such application shall be submitted to the Secretary not later than 120 days before the beginning of the program year.

“(b) CONTENTS.—Applications submitted under this section shall contain such information as the Secretary may reasonably require.

“(c) DETERMINATIONS OF AWARDS.—(1) The Secretary shall determine the amounts to be awarded based on the need demonstrated in the application submitted by the State.

"(2) The Secretary shall notify the State of the determination made under this section no later than 60 days after receiving such State's application.

"(3)(A) Funds received by a State under this section shall be available for expenditure for the first 2 program years of such State's participation under this title, beginning with the program year following the program year in which a determination under this section is made. Expenditure of such funds (or any portion thereof) shall be considered an agreement by the State to participate in accordance with this title for a period of not less than 2 consecutive program years, beginning with the first program year in which such funds become available for expenditure.

"(B) Funds awarded to the State which remain unexpended at the end of such 2 program years shall be reallocated by the Secretary to other participating States.

"(C) Funds received under this section by the State shall be used for activities such as those described in section 508(b) and for higher costs incurred in overcoming the substantial barriers to employment experienced by individuals eligible under this title.

"(d) ALLOCATION.—Funds received under this section may be allocated to State agencies or service delivery areas within the State for expenditure in accordance with this title.

"(e) NOTICE OF PROPOSED RULEMAKING.—Not later than 3 months after the date of the enactment of this title, the Secretary shall issue a notice of proposed rulemaking with respect to this title and shall allow not less than 60 days for public comment. Final regulations shall be issued not later than 7 months following such date of enactment.

29 USC 1791j.

"SEC. 511. EVALUATION AND PERFORMANCE STANDARDS.

"(a) EVALUATION.—The Secretary shall conduct or provide for an evaluation of the incentive bonus program authorized under this title. The Secretary shall consider—

"(1) whether the program results in increased service under this Act to long-term welfare recipients and other hard-to-serve individuals;

"(2) whether the program results in sustained employment of such welfare recipients and individuals, with resultant welfare and other cost savings to the Federal Government;

"(3) whether the program is administratively feasible and cost effective;

"(4) whether the services provided to other eligible participants under part A of title II are affected by the implementation and operation of the incentive bonus program; and

"(5) such other factors as the Secretary deems appropriate.

"(b) REPORT TO CONGRESS.—Not later than January 1, 1996, the Secretary shall report to the Congress on the effectiveness of the incentive bonus program authorized under this title. Such report shall include an analysis of the costs of such program and the results of such activities.

"(c) PERFORMANCE STANDARD.—The Secretary shall establish a performance standard which weights performance outcomes under this title to reflect the higher costs incurred in overcoming the substantial barriers to employment experienced by individuals eligible under this title. Not later than 2 years after the first program year, the Secretary shall prepare and submit to the Congress a report on the effect of such standard."

TABLE OF CONTENTS AMENDMENT.—The table of contents of the is amended by inserting after the items relating to title IV the following new items:

TITLE V—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS INCENTIVE BONUS PROGRAM

- 501. Statement of purpose.
- 502. Definitions.
- 503. Eligibility for incentive bonuses.
- 504. Additional eligibility requirements.
- 505. Amount of incentive bonus.
- 506. Applications and verification required.
- 507. Payments.
- 508. Use of incentive bonus funds.
- 509. Information and data collection.
- 510. Start-up costs.
- 511. Evaluation and performance standards.”.

713. PROVISIONS FOR IMPROVING ASSISTANCE TO HARD-TO-SERVE INDIVIDUALS AND WELFARE RECIPIENTS.

(a) GOVERNORS’ INCENTIVE GRANTS.—The first sentence of section (b)(3)(B) of the Act (29 U.S.C. 1602(b)(3)(B)) is amended by striking “, including incentives for serving hard-to-serve individuals” inserting in lieu thereof “and incentives for serving increased numbers of hard-to-serve individuals, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income”.

(b) PERFORMANCE STANDARDS.—Section 106(e) of the Act (29 U.S.C. 106(e)) is amended—

- (1) by inserting “(1)” after the subsection designation; and
- (2) by adding at the end thereof the following new paragraph:

(2) The Secretary shall—

“(A) provide improved information and technical assistance on performance standards adjustments;

“(B) collect data that better specifies hard-to-serve individuals and long-term welfare dependency; and

“(C) provide guidance on setting performance goals at the service provider level that encourages increased service to the hard-to-serve, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income.

The Secretary shall also reexamine performance standards to ensure that such standards provide maximum flexibility in serving hard-to-serve, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income.”.

714. CONFORMING AND MISCELLANEOUS AMENDMENTS.

(a) CONTENTS OF JOB TRAINING PLAN.—Section 104(b) of the Act (29 U.S.C. 1514(b)) (as amended by subsection (b)) is further amended—

- (1) by redesignating paragraphs (7), (8), (9), (10), and (11) as paragraphs (8), (9), (10), (11), and (12), respectively; and
- (2) by adding after paragraph (6) the following new paragraph:

“(7) by adding after paragraph (6) the following new paragraph:

“(7) a description of the procedures and methods of carrying out title V, relating to incentive bonus payments for the placement of individuals eligible under such title;”

(b) **PERFORMANCE STANDARDS.**—Section 106(b) of the Act (29 U.S.C. 1516(b)) is amended by adding at the end thereof the following new paragraph:

“(5) The Secretary shall prescribe performance standards under this section for programs authorized by title V, relating to the placement of individuals eligible under such title, in accordance with the criteria specified in section 511(c).”

(c) **PLAN COORDINATION.**—Section 121(b) of the Act (29 U.S.C. 1531(b)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by adding after paragraph (2) the following new paragraph:

“(3) The State plan shall include a description of the manner in which the State will encourage the successful carrying out of—

“(A) training activities for eligible individuals whose placement is the basis for the payment to the State of the incentive bonus authorized by title V; and

“(B) the training services, outreach activities, and pre-employment supportive services furnished to such individuals.”.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—Section 3 of the Act (29 U.S.C. 1502) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection:

“(e)(1) Subject to paragraph (2), there are authorized to be appropriated for each of fiscal years 1990 through 1994 such sums as may be necessary to carry out title V.

“(2) No funds appropriated pursuant to this Act may be used to carry out such title for any fiscal year unless funds appropriated to carry out part A of title II exceed any change in the consumer price index from the amounts appropriated for the previous fiscal year to carry out such part.

“(3) From amounts authorized to be appropriated for title V pursuant to paragraph (1), not more than \$5,000,000 may be used for purposes of section 510 of such title.”.

(e) **CONSTRUCTION.**—(1) Part D of title I of the Act (29 U.S.C. 1571 et seq.) is amended by adding at the end thereof the following new section:

“SEC. 172. CONSTRUCTION.

“(a) **ELIGIBILITY.**—Nothing in this Act shall be construed to limit the right of persons to remain eligible for assistance under title XIX of the Social Security Act, relating to Medicaid pursuant to section 1619(b) of such Act.

“(b) **USE OF FUNDS.**—Nothing in this Act shall be construed to authorize the use of funds under this Act for the ongoing support services provided to handicapped individuals placed in supported employment, as such term is defined in section 7(18) of the Rehabilitation Act of 1973.”.

(2) The table of contents of the Act is amended by inserting after the item relating to section 171 the following new item:

“Sec. 172. Construction.”.

TITLE VIII—VETERANS PROGRAMS

SEC. 801. MEDICAL PROGRAMS.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There is hereby authorized to be appropriated to the Veterans' Administration for each of fiscal years 1989 and 1990, in addition to any funds appropriated pursuant to any other authorization (whether definite or indefinite) of appropriations for those fiscal years, the sum of \$30,000,000 for the medical care of veterans by the Veterans' Administration.

(b) **DOMICILIARY CARE.**—Of the amount appropriated pursuant to subsection (a), 50 percent shall be available for—

(1) converting to use for domiciliary care beds the underused space located in facilities under the jurisdiction of the Administrator of Veterans' Affairs in urban areas in which there are significant numbers of homeless veterans; and

Urban areas.

(2) furnishing domiciliary care in such beds to eligible veterans (primarily homeless veterans) who are in need of such care.

(c) **CHRONICALLY MENTALLY ILL HOMELESS VETERANS.**—Of the amount appropriated pursuant to subsection (a), 50 percent shall be available for furnishing care and treatment and rehabilitative services under section 115 of the Veterans Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 501) to homeless veterans who have a chronic mental illness disability. Not more than \$500,000 of the amount available under the preceding sentence shall be used for the purpose of monitoring the furnishing of such care and services and, in furtherance of such purpose, maintaining in the Veterans' Administration the equivalent of 10 full-time employees.

(d) **LIMITATION.**—Nothing in this section shall result in the diminution of the conversion of hospital-care beds to nursing-home-care beds by the Veterans' Administration.

TITLE IX—AID TO FAMILIES WITH DEPENDENT CHILDREN; UNEMPLOYMENT COMPENSATION

State and local governments.

SEC. 901. EXTENSION OF PROHIBITION AGAINST IMPLEMENTATION OF CERTAIN PROPOSED REGULATIONS.

Section 9118 of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1383c) is amended by striking "October 1, 1988" and inserting "September 30, 1989".

SEC. 902. REVIEW OF POLICY GOVERNING USE OF AFDC FUNDS TO MEET EMERGENCY NEEDS OF FAMILIES ELIGIBLE FOR AFDC THROUGH EMERGENCY ASSISTANCE OR SPECIAL NEEDS PAYMENTS; REPORT TO CONGRESS.

(a) **REVIEW OF POLICY.**—The Secretary of Health and Human Services shall review the policies in effect, as of the date of the enactment of this section, with respect to the use by States of amounts paid to such States under the program of aid to families with dependent children under part A of title IV of the Social Security Act, in the form of payments of aid to meet special needs or emergency assistance under section 406(e) of such Act to meet emergency needs of families who are eligible for such aid.

(b) **REPORT TO CONGRESS.**—Not later than July 1, 1989, the Secretary of Health and Human Services shall submit to the Congress a report containing recommendations for legislative and regulatory changes designed to—

(1) improve the ability of the program of aid to families with dependent children under part A of title IV of the Social Security Act to respond to emergency needs of families who are eligible for such aid; and

(2) eliminate the use of funds provided to States under such program to pay for the provision of shelter in commercial or similar transient facilities.

Housing.
42 USC 11381
note.

SEC. 903. DEMONSTRATION PROJECTS TO REDUCE NUMBER OF HOMELESS AFDC FAMILIES IN WELFARE HOTELS.

(a) **IN GENERAL.**—In order to enable States to provide housing for homeless families who are recipients of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act in transitional facilities instead of in commercial or similar transient facilities, at least 2 but not more than 3 States may undertake and carry out demonstration projects in accordance with this section. States may use public or private nonprofit agencies in carrying out demonstration projects in accordance with this section. Demonstration projects under this section shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the “Secretary”) shall prescribe.

(b) **DUTIES OF SECRETARY OF HEALTH AND HUMAN SERVICES.**—The Secretary shall—

(1) consider all applications received from States desiring to conduct demonstration projects under this section;

(2) transmit to the Comptroller General for review under subsection (e) a copy of each such application received;

(3) approve at least 2 but not more than 3 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section; and

(4) make grants from funds appropriated to carry out this section to each State whose application is so approved to carry out the project that is the subject of the application.

(c) **PROJECT REQUIREMENTS.**—The Secretary shall not approve an application received from a State for a demonstration project under this section unless the State agency that administers the program of aid to families with dependent children in the State under a State plan approved under part A of title IV of the Social Security Act demonstrates that the project will—

(1) provide housing in transitional facilities only to homeless families who are recipients of aid to families with dependent children under the State plan and who reside in commercial or similar transient facilities;

(2) permanently reduce the number of rooms used to house homeless families who are recipients of such aid in commercial or similar transient facilities by the number of units made available in transitional facilities in accordance with paragraph (1); and

(3) provide that the Federal share of the total amount of cash assistance provided under the project to families residing in transitional facilities plus the total amount of grants made to the State under this section must be less than or equal to the

Grants.

Federal share of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

(d) **USE OF FUNDS.**—Each State that receives funds under this section shall use such funds to—

(1) rehabilitate or construct transitional facilities which are easily convertible to permanent housing when such facilities are no longer needed as transitional facilities; and

(2) provide on-site social services at such facilities.

(e) **GAO REVIEW OF APPLICATIONS.**—Within 90 days after the Comptroller General receives from the Secretary a copy of an application submitted under this section, the Comptroller General shall review such application and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on whether the Federal share of the total amount of cash assistance to be provided under the project which is the subject of the application to families residing in transitional facilities plus the total amount of grants to be made to the State under this section is less than or equal to the Federal share of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

Reports.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—For grants under this section, there is authorized to be appropriated to the Secretary for the fiscal year 1990 not to exceed \$20,000,000, which shall remain available until expended.

(g) **DEFINITIONS.**—As used in section 902 and this section:

(1) **HOMELESS FAMILY.**—The term “homeless family” means a dependent child or children and the relatives with whom such child or children are living, who—

(A) lack a fixed and regular nighttime address;

(B) have a primary residence that is a shelter designed for temporary accommodation, a hotel, or a motel; or

(C) are living in a place not designed for, or ordinarily used as, a regular sleeping accommodation.

(2) **COMMERCIAL OR SIMILAR TRANSIENT FACILITIES.**—The term “commercial or similar transient facilities” means transient accommodations in—

(A) a commercial hotel or motel operated by a privately owned for-profit entity; or

(B) a similar establishment which is not a transitional facility (whether or not directly operated or contracted for by the State or a political subdivision or by a not-for-profit organization authorized by the State or political subdivision to provide such accommodations).

(3) **TRANSITIONAL FACILITY.**—The term “transitional facility” means any facility operated by a State or local government or a nonprofit organization which, at a minimum—

(A) provides temporary and private sleeping accommodations, and temporary eating and cooking accommodations; and

(B) provides services to help families locate and retain permanent housing.

SEC. 904. PREVENTING FRAUD AND ABUSE IN HOUSING AND URBAN DEVELOPMENT PROGRAMS.

42 USC 3544.

(a) **DEFINITIONS.**—As used in this section:

(1) **SECRETARY.**—The term “Secretary” means the Secretary of Housing and Urban Development.

(2) **APPLICANT; PARTICIPANT.**—The terms “applicant” and “participant” shall have such meanings as the Secretary by regulation shall prescribe, except that such terms shall include members of an applicant’s or participant’s household, and such terms shall not include persons whose involvement is only in their official capacity, such as State or local government officials and officers of lending institutions.

(3) **PUBLIC HOUSING AGENCY.**—The term “public housing agency” means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

(b) **APPLICANT AND PARTICIPANT CONSENT.**—As a condition of initial or continuing eligibility for participation in any program of the Department of Housing and Urban Development involving initial and periodic review of an applicant’s or participant’s income, and to assure that the level of benefits provided under the program is correct, the Secretary may require that an applicant or participant—

(1) sign a consent form approved by the Secretary authorizing the Secretary, the public housing agency, or the owner responsible for determining eligibility for or level of benefits to request current or previous employers to verify salary and wage information pertinent to the applicant’s or participant’s eligibility or level of benefits; and

(2) sign a consent form approved by the Secretary authorizing the Secretary or the public housing agency responsible for determining eligibility or level of benefits to request a State agency charged with the administration of the State unemployment law to release wage information with respect to such applicant or participant or information regarding whether such applicant or participant is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such applicant or participant.

This consent form shall not be used to request taxpayer return information protected by section 6103 of the Internal Revenue Code of 1986.

(c) **ACCESS TO STATE EMPLOYMENT RECORDS.**—

(1) **AMENDMENTS TO SOCIAL SECURITY ACT.**—(A) Section 303 of the Social Security Act (42 U.S.C. 503) is amended by adding at the end the following new subsection:

“(i)(1) The State agency charged with the administration of the State law—

“(A) shall disclose, upon request and on a reimbursable basis, only to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency, any of the following information contained in the records of such State agency with respect to individuals applying for or participating in any housing assistance program administered by the Department who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development—

“(i) wage information, and

“(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation,

and the amount of any such compensation being received (or to be received) by such individual, and

“(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to ensure that information disclosed under subparagraph (A) is used only for purposes of determining an individual’s eligibility for benefits, or the amount of benefits, under a housing assistance program of the Department of Housing and Urban Development.

“(2) The Secretary of Labor shall prescribe regulations governing how often and in what form information may be disclosed under paragraph (1)(A).

Regulations.

“(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he or she is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he or she shall make no future certification to the Secretary of the Treasury with respect to such State.

“(4) For purposes of this subsection, the term ‘public housing agency’ means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

“(5) The provisions of this subsection shall cease to be effective beginning on October 1, 1994.”

Termination date.

(B) Section 304(a)(2) of the Social Security Act (42 U.S.C. 504(a)(2)) is amended by striking “(e), or (h)” and inserting “(e), (h), or (i)”.

(2) APPLICANT AND PARTICIPANT PROTECTIONS.—(A) In order to protect applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 303(i) of the Social Security Act from the State agency charged with the administration of the State unemployment compensation law, officers and employees of the Department of Housing and Urban Development and representatives of public housing agencies may only use such information—

(i) to verify an applicant’s or participant’s eligibility for or level of benefits; or

(ii) in the case of an owner responsible for determining eligibility for or level of benefits, to inform such owner that an applicant’s or participant’s eligibility for or level of benefits is uncertain and to request such owner to verify such applicant’s or participant’s income information.

(B) No Federal, State, or local agency, or public housing agency, or owner responsible for determining eligibility for or level of benefits receiving such information may terminate, deny, suspend, or reduce any benefits of an applicant or participant until such agency or owner has taken appropriate steps to independently verify information relating to—

(i) the amount of the wages or unemployment compensation involved,

(ii) whether such applicant or participant actually has (or had) access to such wages or benefits for his or her own use, and

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages or benefits.

(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) **PENALTY.**—(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 303(i) of the Social Security Act under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. The term “person” as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by (i) a negligent or knowing disclosure of information referred to in this section or in section 303(i) of the Social Security Act about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), or any regulation implementing this section or such section 303(i), or (ii) any other negligent or knowing action that is inconsistent with this section, such section 303(i), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney’s fees and other litigation costs.

Courts, U.S.

(d) EFFECTIVE DATE.—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), the provisions of this section shall take effect on September 30, 1989.

(2) **OPTIONAL EARLY IMPLEMENTATION.**—At the initiative of a State or an agency of the State, and with the approval of the Secretary of Labor, the amendments made by subsection (c)(1) may be made effective in such State on any date before September 30, 1989, which is more than 90 days after the date of the enactment of this section.

(3) **REQUIREMENTS FOR STATE AGENCIES.**—In the case of any State the legislature of which has not been in session for at least 30 calendar days (whether or not consecutive) between the date of the enactment of this Act and September 30, 1989, the amendments made by subsection (c)(1) shall take effect 30 cal-

endar days after the first day on which such legislature is in session on or after September 30, 1989.

TITLE X—HOUSING AND COMMUNITY DEVELOPMENT TECHNICAL AMENDMENTS

Subtitle A—Housing Assistance

SEC. 1001. INCOME ELIGIBILITY FOR ASSISTED HOUSING.

(a) **IN GENERAL.**—Section 16(c) of the United States Housing Act of 1937 (42 U.S.C. 1437n(c)) is amended in the first sentence—

(1) by striking “, and” and inserting a comma;

(2) by striking “, as appropriate” and all that follows through “programs” and inserting the following: “an appropriate specific percentage of lower income families other than very-low income families that may be assisted in each assisted housing program”; and

(3) by inserting before the period at the end the following: “, and shall prohibit project owners from selecting families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence”.

(b) **CLARIFICATION.**—Section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(A)) is amended by inserting before the semicolon at the end the following: “and shall not permit public housing agencies to select families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence”.

SEC. 1002. PUBLIC HOUSING CHILD CARE GRANTS.

(a) **AVAILABILITY OF CHILD CARE SERVICES IN FACILITIES NEAR PUBLIC HOUSING.**—Subsections (a), (b), (c), and (e) of section 222 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701z-6 note) are amended by inserting “or near” after “child care services in” each place it appears.

(b) **CONFORMING AMENDMENTS.**—

(1) **ELIGIBILITY FOR ASSISTANCE.**—Section 222(b) of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701z-6 note) is amended—

(A) by striking “in the project” each place it appears and inserting “for the project”; and

(B) in paragraph (2), by inserting “in or near the project” after “facilities”.

(2) **ALLOCATION OF ASSISTANCE.**—Section 222(c)(3) of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701z-6 note) is amended by striking “established in” and inserting “established for”.

SEC. 1003. PUBLIC HOUSING RESIDENT MANAGEMENT.

Section 20 of the United States Housing Act of 1937 (42 U.S.C. 1437r) is amended by adding at the end the following new subsection:

Contracts.

"(h) **APPLICABILITY.**—Any management contract between a public housing agency and a resident management corporation that is entered into after the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 shall be subject to this section and the regulations issued to carry out this section."

SEC. 1004. PROHIBITION OF REDUCTION OF SECTION 8 CONTRACT RENTS.

(a) **IN GENERAL.**—Section 8(c)(2)(C) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(C)) is amended—

(1) in the first sentence, by striking "as hereinbefore provided" and inserting the following: "under subparagraphs (A) and (B)"; and

(2) by adding at the end the following new sentences: "Any maximum monthly rent that has been reduced by the Secretary after April 14, 1987, and prior to the enactment of this sentence shall be restored to the maximum monthly rent in effect on April 15, 1987. For any project which has had its maximum monthly rents reduced after April 14, 1987, the Secretary shall make assistance payments (from amounts reserved for the original contract) to the owner of such project in an amount equal to the difference between the maximum monthly rents in effect on April 15, 1987, and the reduced maximum monthly rents, multiplied by the number of months that the reduced maximum monthly rents were in effect."

42 USC 1437f
note.

(b) **BUDGET COMPLIANCE.**—During fiscal year 1989, the amendment made by subsection (a)(2) shall be effective only to such extent or in such amounts as are provided in appropriation Acts. For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119), to the extent that this section has the effect of transferring an outlay of the United States from one fiscal year to an adjacent fiscal year, the transfer is a necessary (but secondary) result of a significant policy change.

SEC. 1005. PROJECT-BASED SECTION 8 ASSISTANCE.

Regulations.
42 USC 1437f
note.
Contracts.

(a) **IMPLEMENTATION OF PROGRAM.**—To implement the amendment made by section 148 of the Housing and Community Development Act of 1987, the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 30 days after the date of the enactment of this Act. Until the effective date of the regulations, the Secretary of Housing and Urban Development shall consider each application from a public housing agency to attach a contract for assistance payments to a structure, in accordance with the amendment made by such section 148 to section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)), and shall promptly approve such application if it meets the requirements of such section 8(d)(2).

(b) **AVAILABILITY IN NEW CONSTRUCTION PROJECTS.**—

(1) **IN GENERAL.**—Section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)) is amended—

(A) by inserting "(A)" after the paragraph designation;

(B) by striking "(A)" and "(B)" each place it appears and inserting "(i)" and "(ii)", respectively; and

(C) by adding at the end the following new subparagraph:

"(B) The Secretary shall permit any public housing agency to approve the attachment of assistance under subsection (b)(1) with respect to any newly constructed structure if—

"(i) the owner or prospective owner agrees to construct the structure other than with assistance under this Act and otherwise complies with the requirements of this section; and

"(ii) the aggregate assistance provided by the public housing agency pursuant to this subparagraph and the last sentence of subparagraph (A) does not exceed 15 percent of the assistance provided by the public housing agency."

(2) REGULATIONS.—To implement the amendments made by this subsection, the Secretary of Housing and Urban Development shall issue regulations that take effect not later than 90 days after the date of the enactment of this Act.

42 USC 1437f note.

(c) RENEWAL OF CONTRACTS.—Section 8(d)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(2)) (as amended by subsection (b) of this section) is further amended by adding at the end the following new subparagraph:

"(C) Any contract for assistance payments that is attached to a structure under this paragraph shall (at the option of the public housing agency but subject to available funds) be renewable for 2 additional 5-year terms, except that the aggregate term of the initial contract and renewals shall not exceed 15 years."

(d) EXCEPTION TO 15 PERCENT LIMITATION.—

(1) ALTOONA, PENNSYLVANIA.—The Secretary of Housing and Urban Development, in accordance with paragraph (2) of section 8(d) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)) but without regard to the 15 percent limitation set forth in such paragraph, shall permit the attachment of contracts for assistance payments to the facility located in Altoona, Pennsylvania, that is the Penn Alto Hotel and will include not less than 140 units of housing for the elderly.

Aged persons.

(2) MINNEAPOLIS, MINNESOTA.—Any tenant who is on the waiting list for dwellings in the Cedar Square West Project in Minneapolis, Minnesota, or is living in an overcrowded dwelling in the project, shall be given preference for the 250 project-based certificates under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) that, before the date of the enactment of this Act, were offered in settlement for a lawsuit, notwithstanding section 8(d)(1)(A) of such Act. The Secretary of Housing and Urban Development, in accordance with paragraph (2) of section 8(d) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)) but without regard to the 15 percent limitation set forth in such paragraph, shall permit the attachment of contracts for assistance payments to structures to the extent necessary to provide the assistance for such 250 certificates.

Contracts.

SEC. 1006. SECTION 8 ASSISTANCE FOR RESIDENTS OF RENTAL REHABILITATION PROJECTS.

Section 8(u) of the United States Housing Act of 1937 (42 U.S.C. 1437f(u)) is amended—

- (1) by striking "and" at the end of paragraph (1);
- (2) by striking the period at the end of paragraph (2) and inserting "and"; and

(3) by adding at the end the following new paragraph:

"(3) the Secretary shall allocate assistance for certificates or vouchers under this section to ensure that sufficient resources are available to address the physical or economic displacement, or potential economic displacement, of existing tenants pursuant to paragraphs (1) and (2)."

SEC. 1007. RENTAL REHABILITATION PROGRAM.

(a) **ADMINISTRATIVE EXPENSES.**—Section 17(h) of the United States Housing Act of 1937 (42 U.S.C. 1437o(h)) is amended to read as follows:

“(h) **ADMINISTRATIVE EXPENSES.**—(1) Except as provided in paragraph (2), grantees receiving assistance under this section may not deduct therefrom any amounts to cover administrative expenses in carrying out their responsibilities under this section.

“(2) A grantee may use not more than 10 percent of its initial rental rehabilitation grant under subsection (c) for each year to cover administrative expenses in carrying out its responsibilities under this section. Any State shall share the amount provided pursuant to the preceding sentence with units of general local government administering the program with the State.”

State and local
governments.

(b) **CORRECTION OF CROSS-REFERENCE.**—Section 17(i)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437o(i)(2)) is amended by striking “section 104(f)” and inserting “section 104(g)”.

SEC. 1008. TWEEMILL HOUSE.

The Secretary of Housing and Urban Development shall process the application under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) for project 012-EH347 (Tweemill House) without regard to the cost limits that would otherwise be imposed pursuant to 24 C.F.R. 885.410(a)(1), and the assistance to such project under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) may exceed the fair market rents established under section 8(c)(1) of such Act.

SEC. 1009. HOUSING COUNSELING.

Section 106(a)(2) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(a)(2)) is amended by inserting before the period at the end of the first sentence the following: “or guaranteed or insured under chapter 37 of title 38, United States Code”.

SEC. 1010. MULTIFAMILY HOUSING MANAGEMENT AND PRESERVATION.

(a) **UNSUBSIDIZED PROJECTS.**—Section 203(a)(1)(C) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(a)(1)(C)) is amended by striking “, on the date of assignment, occupied by low- and moderate-income persons” and inserting the following: “occupied by low- and moderate-income persons on the date of assignment or foreclosure (whichever is greater)”.

Contracts.

(b) **SECTION 8 ASSISTANCE.**—The third sentence of section 203(d)(1) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(d)(1)) is amended to read as follows: “Such contracts shall be sufficient to assist (A) all units in multifamily housing projects that are subsidized projects or formerly subsidized projects; (B) in other multifamily housing projects owned by the Secretary, the units that, on the date title to the projects is acquired by the Secretary, are occupied by lower income families eligible for assistance under such section 8 or are vacant (which units shall be made available for such families as soon as possible); and (C) in all other multifamily housing projects, the units that are occupied by lower income families eligible for assistance under such section 8 on the date of assignment or foreclosure (whichever is greater).”

State and local
governments.

(c) **RIGHT OF FIRST REFUSAL.**—Section 203(e) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)) is amended to read as follows:

“(e)(1) Prior to the sale of a multifamily housing project that is owned by the Secretary, the Secretary shall develop a disposition plan for the project that specifies the minimum terms and conditions of the Secretary for disposition of the project, including the initial sales price that is acceptable to the Secretary and the assistance that the Secretary plans to make available to a prospective purchaser in accordance with subsections (a) and (d). The initial sales price shall reflect the value of the project as housing affordable to low- and moderate-income persons for the period required in subsection (d).

“(2) Upon approval of a disposition plan for a project, the Secretary shall notify the local government and the State housing finance agency (or other agency or agencies designated by the Governor) of the terms and conditions of the disposition plan. The local government and the designated State agency shall have 90 days to make an offer to purchase the project.

“(3) The Secretary shall accept an offer that complies with the terms and conditions of the disposition plan. The Secretary may accept an offer that does not comply with the terms and conditions of the disposition plan if the Secretary determines that the offer will further the preservation objectives of subsection (a) by actions that include extension of the duration of low- and moderate-income affordability restrictions or otherwise restructuring the transaction in a manner that enhances the long-term affordability for low- and moderate-income persons. The Secretary shall, in particular, have discretion to reduce the initial sales price in exchange for the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to subsection (d)(1). If the Secretary and the local government or designated State agency cannot reach agreement within 90 days, the Secretary may offer the project for sale to the general public.

“(4) The Secretary shall prohibit any local government or designated State agency from transferring projects acquired under a right of first refusal under this subsection to a private entity, unless the local government or designated State agency solicits proposals from such entities through a public process. The solicitation of proposals shall be based on prescribed criteria, which shall include the extension of low- and moderate-income affordability restrictions beyond the 15-year period contemplated by the attachment of assistance pursuant to subsection (d)(1).

“(5) Notwithstanding any other provision of law to the contrary, a local government (including a public housing agency) or designated State agency may purchase a subsidized or formerly subsidized project in accordance with this subsection.”

(d) DEFINITION OF SUBSIDIZED PROJECT.—Section 203(i)(2)(E) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(i)(2)(E)) is amended by striking “(other)” and all that follows and inserting “(excluding payments made for certificates under subsection (b)(1) or vouchers under subsection (o)), if (except for purposes of paragraphs (1) and (2) of subsection (h) and section 183(c) of the Housing and Community Development Act of 1987) such housing assistance payments are made to more than 50 percent of the units in the project.”

(e) DATE OF ASSIGNMENT.—Section 203(i) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(i)) is amended by adding at the end the following new paragraph:

“(4) For purposes of subsection (a)(1)(C) and subsection (d)—

“(A) the term ‘date of assignment’ means the date of assignment, without regard to whether such date occurs before, on, or after February 5, 1988; and

“(B) in the case of a multifamily housing project assigned before the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 and for which there are no records identifying the number of low- and moderate-income persons occupying units in the project on the date of assignment, the number of low- and moderate-income persons occupying units in the project within 120 days of such date of enactment shall be used instead.”.

(f) **ANNUAL REPORT ON RIGHT OF FIRST REFUSAL.**—Section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11) is amended by adding at the end the following new subsection:

“(k) The Secretary shall annually submit to the Congress a report describing the activities carried out under subsection (e) during the preceding year.”.

SEC. 1011. MULTIFAMILY HOUSING CAPITAL IMPROVEMENTS ASSISTANCE.

(a) **AMOUNTS AVAILABLE.**—Section 201(j)(4) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a(j)(4)) is amended—

(1) by striking “may use not more than \$50,000,000” and inserting the following: “shall, to the extent of approvable applications and subject to paragraph (1), use not less than \$30,000,000 or 40 percent (whichever is less) of the amounts available”; and

(2) by adding at the end the following new sentence: “Any amount reserved under this paragraph for assistance for capital improvements that is not used before the last 60 days of a fiscal year shall become available for other assistance under this section.”.

(b) **IMPLEMENTATION OF PROGRAM.**—To implement the amendments made by section 185 of the Housing and Community Development Act of 1987, the Secretary of Housing and Urban Development shall issue regulations that become effective not later than February 5, 1989.

SEC. 1012. USE OF FUNDS RECAPTURED FROM REFINANCING STATE FINANCE PROJECTS.

(a) **IN GENERAL.**—In the case of any State financed project that was provided a financial adjustment factor under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) and is being refinanced, 50 percent of the amounts that are recaptured from the project shall be made available to the State housing finance agency in the State where the project is located for use in providing decent, safe, and sanitary housing affordable to very low-income families or persons.

(b) **BUDGET COMPLIANCE.**—Subsection (a) shall be effective only to such extent or in such amounts as are provided in appropriation Acts.

Regulations.
12 USC 1715z-1a
note.

42 USC 1437f
note.

SEC. 1013. PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURES.

The Secretary of Housing and Urban Development shall publish a notice providing that the final rule of the Department of Housing and Urban Development entitled "Public Housing—Tenancy and Administrative Grievance Procedure" and published in the Federal Register of August 30, 1988 (53 Fed. Reg. 33216 et seq.) shall be interim for effect. The Secretary shall afford interested persons an opportunity to comment on the rule in accordance with section 553(c) of title 5, United States Code, and such comment period shall continue for not less than 60 days, or until March 1, 1989, whichever occurs later.

SEC. 1014. EXCEPTIONS TO TENANT PREFERENCE PROVISIONS.**(a) PUBLIC HOUSING.—**

(1) **IN GENERAL.**—Section 6(c)(4)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437d(c)(4)(A)) (as amended by section 1001(b) of this Act) is further amended—

(A) by inserting "(i)" after "but"; and

(B) by inserting before the semicolon at the end the following: "; and (ii) the public housing agency may provide for circumstances in which families who do not qualify for any preference established in this subparagraph are provided assistance before families who do qualify for such preference, except that not more than 10 percent of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference".

(2) **INDIAN HOUSING.**—In accordance with section 201(b)(2) of the United States Housing Act of 1937, the amendments made by paragraph (1) shall also apply to public housing developed or operated pursuant to a contract between the Secretary of Housing and Urban Development and an Indian housing authority.

42 USC 1437d
note.

(b) **SECTION 8 ASSISTANCE.**—Section 8(d)(1)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(A)) is amended—

(1) by inserting "(i)" after "except that"; and

(2) by inserting before the semicolon at the end the following: "; and (ii) the public housing agency may provide for circumstances in which families who do not qualify for any preference established in clause (i) are provided assistance before families who do qualify for such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this clause) may be families who do not qualify for such preference".

(c) **HOUSING VOUCHERS.**—Section 8(o)(3) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(3)) is amended by adding at the end the following new sentence: "A public housing agency may provide for circumstances in which families who do not qualify for any preference established in the preceding sentence are provided assistance under this subsection before families who do qualify for

such preference, except that not more than 10 percent (or such higher percentage determined by the Secretary to be necessary to ensure that public housing agencies can assist families in accordance with subsection (u)(2) or determined by the Secretary to be appropriate for other good cause) of the families who initially receive assistance in any 1-year period (or such shorter period selected by the public housing agency before the beginning of its first full year subject to this sentence) may be families who do not qualify for such preference.”

Subtitle B—Preservation of Low Income Housing

SEC. 1021. NOTICE OF INTENT.

Section 222 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended in the last sentence by striking “notice or intent” and inserting “notice of intent”.

SEC. 1022. PLAN OF ACTION.

(a) **PROVISION OF INFORMATION.**—Section 223(a) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended by inserting before the period at the end of the first sentence the following: “, and any relevant market area and demographic information that the Secretary has custody of and that the owner may use in preparing the plan”.

(b) **CONTENTS OF PLAN.**—Section 223 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended by adding at the end the following new subsection:

“(d) **AUTHORITY TO LIMIT CONTENTS OF PLAN.**—The Secretary shall limit the amount of appraisal, market area, and demographic information required under this section in the case of a plan of action requesting incentives.”

SEC. 1023. INCENTIVES TO EXTEND LOW INCOME USE.

Section 224(b) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended in the matter preceding paragraph (1) by striking “Such agreements” and inserting the following: “Agreements entered into under subsection (a) that by modifications to the existing regulatory agreement or mortgage extend the low income affordability restrictions through the term of the mortgage or, in the case of the prepayment of a mortgage, by a recorded instrument impose low income affordability restrictions (including the obligations specified in the regulatory agreement) through a period equivalent to the term of the original mortgage”.

SEC. 1024. CRITERIA FOR APPROVAL OF PLAN OF ACTION.

Section 225(a)(1) of the Housing and Community Development Act of 1987 (12 U.S.C. 1715l note) is amended—

(1) by inserting after “economic hardship for current tenants” the following: “(and will not in any event result in (A) a monthly rental payment by a current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower), or (B) in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that ex-

ceeds the increase in the Consumer Price Index or 10 percent (whichever is lower)”; and

(2) by inserting before the semicolon at the end the following: “, determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement”.

SEC. 1025. MODIFICATION OF EXISTING REGULATORY AGREEMENTS.

(a) **CORRECTION OF CROSS-REFERENCE.**—Section 228(a)(5) of the Housing and Community Development Act of 1987 (12 U.S.C. 17151 note) is amended by striking “section 225(b)(6)” and inserting “section 225(b)(3)(F)”.

(b) **CORRECTION OF TYPOGRAPHICAL ERROR.**—Section 228(a) of the Housing and Community Development Act of 1987 (12 U.S.C. 17151 note) is amended by inserting a period at the end.

SEC. 1026. REPORT ON NOTICE TO TENANTS AND INCENTIVES.

Section 232 of the Housing and Community Development Act of 1987 (12 U.S.C. 17151 note) is amended by adding at the end the following new sentence: “The report shall also include a detailed description of (1) the actions taken by the Secretary to ensure meaningful participation by affected tenants; and (2) the incentives developed by the Secretary under section 224 to ensure compliance with this subtitle.”.

SEC. 1027. DEFINITION OF ELIGIBLE LOW INCOME HOUSING.

Section 233(1)(A)(iii) of the Housing and Community Development Act of 1987 (12 U.S.C. 17151 note) is amended by inserting “or a State or State agency” after “Secretary”.

SEC. 1028. RURAL RENTAL HOUSING DISPLACEMENT PREVENTION.

(a) **ASSISTANCE AVAILABLE TO BORROWER.**—Section 502(c)(4)(B)(iv) of the Housing Act of 1949 (42 U.S.C. 1472(c)(4)(B)(iv)) is amended by striking “paragraphs (7) and (8) of section 515(b)” and inserting “paragraphs (1) and (2) of section 515(c)”.

(b) **SELECTION OF PURCHASERS.**—Section 502(c)(5)(B) of the Housing Act of 1949 (42 U.S.C. 1472(c)(5)(B)) is amended by adding at the end the following new clause:

“(iii) **SELECTION OF QUALIFIED PURCHASER.**—The Secretary shall promulgate regulations that establish criteria for selecting a qualified nonprofit organization or public agency to purchase housing and related facilities when more than 1 such organization or agency has made a bona fide offer. Such regulations shall give a priority to those organizations or agencies with the greatest experience in developing or managing low income housing or community development projects and with the longest record of service to the community.”.

Regulations.

(c) **DEFINITIONS OF NONPROFIT ORGANIZATIONS.**—Section 502(c)(5)(I) of the Housing Act of 1949 (42 U.S.C. 1472(c)(5)(I)) is amended to read as follows:

“(I) **DEFINITIONS.**—For purposes of this paragraph:

“(i) **LOCAL NONPROFIT ORGANIZATION.**—The term ‘local nonprofit organization’ means a nonprofit organization that—

“(I) has a broad based board reflecting various interests in the community or trade area; and

“(II) is a not-for-profit charitable organization whose principal purposes include developing or managing low income housing or community development projects.

“(ii) **NONPROFIT ORGANIZATION.**—The term ‘nonprofit organization’ means any private organization—

“(I) no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

“(II) that is approved by the Secretary as to financial responsibility; and

“(III) that does not have among its officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in loans financed under section 515 that have been prepaid.”.

SEC. 1029. SECTION 8 LOAN MANAGEMENT PROGRAM.

(a) **REPEAL OF 15-YEAR TERM REQUIREMENT.**—Section 8(v) of the United States Housing Act of 1937 (42 U.S.C. 1437f(v)) is amended—

(1) by striking paragraph (1); and

(2) by redesignating paragraph (2) as paragraph (1).

(b) **EXECUTION OF NEW CONTRACTS.**—Section 8(v)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(v)(1)) (as so redesignated by subsection (a) of this section) is amended by inserting “for project-based loan management assistance” after “new contract”.

(c) **AVAILABILITY OF ASSISTANCE FOR UNSUBSIDIZED PROJECTS.**—Section 8(v) of the United States Housing Act of 1937 (42 U.S.C. 1437f(v)) (as amended by subsection (a) of this section) is further amended by adding at the end the following new paragraph:

“(2)(A) The eligibility of a multifamily residential project for loan management assistance under this section shall be determined without regard to whether the project is subsidized or unsubsidized.

“(B) In allocating loan management assistance under this section, the Secretary may give a priority to any project only on the basis that the project has serious financial problems that are likely to result in a claim on the insurance fund in the near future or the project is eligible to receive incentives under subtitle B of the Emergency Low Income Housing Preservation Act of 1987.”.

Subtitle C—Rural Housing

SEC. 1041. IMPLEMENTATION OF GUARANTEED LOAN DEMONSTRATION.

Regulations.

(a) **IN GENERAL.**—Section 304(a) of the Housing and Community Development Act of 1987 (42 U.S.C. 1472 note) is amended by adding at the end the following: “To implement this section, the Secretary shall issue regulations that take effect not later than 120 days after the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.”.

(b) **CLARIFICATION.**—Section 304 of the Housing and Community Development Act of 1987 (42 U.S.C. 1472 note) is amended by adding at the end the following new subsection:

“(f) **RELATION TO OTHER LAW.**—Section 502(d), and the second sentence of section 517(e), of the Housing Act of 1949 shall not apply to this section.”.

(c) **APPLICABILITY.**—The amendments made by this section shall apply to fiscal year 1989 and each succeeding fiscal year.

42 USC 1472
note.

SEC. 1042. SECTION 515 RENTS.

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) is amended by striking subsection (h).

SEC. 1043. AVAILABILITY OF DOMESTIC FARM LABOR HOUSING FOR OTHER FAMILIES.

(a) **INSURED LOAN PROGRAM.**—Section 514 of the Housing Act of 1949 (42 U.S.C. 1484) is amended by adding at the end the following new subsection:

“(i) Housing and related facilities constructed with loans under this section may be used for tenants eligible for occupancy under section 515 if the Secretary determines that—

“(1) there is no longer a need in the area for farm labor housing; or

“(2) the need for such housing in the area has diminished to the extent that the purpose of the loan, providing housing for domestic farm labor, can no longer be met.”.

(b) **GRANT PROGRAM.**—Section 516 of the Housing Act of 1949 (42 U.S.C. 1486) is amended by adding at the end the following new subsection:

“(j) Housing and related facilities constructed with grants under this section may be used for tenants eligible for occupancy under section 515 if the Secretary determines that—

“(1) there is no longer a need in the area for farm labor housing; or

“(2) the need for such housing in the area has diminished to the extent that the purpose of the grant, providing housing for domestic farm labor, can no longer be met.”.

SEC. 1044. RURAL RENTAL REHABILITATION DEMONSTRATION.

Section 311(b) of the Housing and Community Development Act of 1987 (42 U.S.C. 1490m note) is amended—

(1) by striking “provided to” and inserting “provided in”; and

(2) by inserting before the period at the end the following: “, including areas located in States where the Secretary administers the rental rehabilitation grant program”.

SEC. 1045. LEGAL REPRESENTATION IN LITIGATION INVOLVING COLLECTION OF CLAIMS AND OBLIGATIONS ARISING OUT OF RURAL HOUSING PROGRAMS.

Section 510(d) of the Housing Act of 1949 (42 U.S.C. 1480(d)) is amended by inserting before the semicolon at the end the following: “; except that—

“(1) prosecution and defense of any litigation under section 502 shall be conducted, at the discretion of the Secretary, by—

“(A) the United States attorneys for the districts in which the litigation arises and any other attorney that the Attorney General may designate under law, under the supervision of the Attorney General;

“(B) the General Counsel of the Department of Agriculture; or

“(C) any other attorney with whom the Secretary enters into a contract after a determination by the Secretary that—

Contracts.

“(i) the attorney will provide competent and cost-effective representation for the Farmers Home Administration; and

“(ii) representation by the attorney will either (I) accelerate the process by which a family or person eligible for assistance under section 502 will be able to purchase and occupy the housing involved; or (II) preserve the quality of the housing involved; and

Reports.

“(2) the Secretary shall annually submit to the Congress a report describing activities carried out under paragraph (1)(C), including the cost of entering into contracts with such attorneys and the savings resulting from expedited foreclosure proceedings”.

Subtitle D—Mortgage Insurance and Secondary Mortgage Market Programs

SEC. 1061. CHANGE IN DEFINITION OF VETERAN.

Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) is amended to read as if the amendment made by section 405(l) of the Housing and Community Development Act of 1987 (101 Stat. 1899) to section 203(b)(3)(2) of the National Housing Act had been made instead to section 203(b)(2) of the National Housing Act.

SEC. 1062. LIMITATION ON USE OF SINGLE FAMILY MORTGAGE INSURANCE BY INVESTORS.

(a) **EXEMPTION FROM OCCUPANCY REQUIREMENT.**—Section 203(g)(3) of the National Housing Act (12 U.S.C. 1709(g)(3)) is amended—

(1) by striking “or” at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(F) a mortgagor that, pursuant to section 223(a)(7), is refinancing an existing mortgage insured under this Act for not more than the outstanding balance of the existing mortgage, if the amount of the monthly payment due under the refinancing mortgage is less than the amount due under the existing mortgage for the month in which the refinancing mortgage is executed.”

(b) **CORRECTION OF CONFORMING AMENDMENT.**—Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended to read as if the amendment made by section 406(b)(1)(B) of the Housing and Community Development Act of 1987 (101 Stat. 1900) had deleted instead the following: “to be occupied as the principal residence of the owner”.

SEC. 1063. PROCEDURES APPLICABLE TO ASSUMPTION OF INSURED MORTGAGES.

(a) **CREDIT REVIEWS.**—Section 203(r)(2) of the National Housing Act (12 U.S.C. 1709(r)(2)) is amended by striking “date on which the mortgage is endorsed for insurance” each place it appears and inserting “date on which the mortgage is executed”.

(b) **EFFECTIVE DATE.**—Section 407(a)(2) of the Housing and Community Development Act of 1987 is amended to read as follows:

“(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to each mortgage originated pursuant to an application for commitment for insurance signed by the applicant on or after December 1, 1986.”.

SEC. 1064. PAYMENT OF CLAIMS ON LOSSES FROM PREFORECLOSURE SALES.

(a) **IN GENERAL.**—The second sentence of section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) is amended—

(1) by inserting “(A)” after “(1)”; and

(2) by striking “, and (2)” and inserting the following: “, or (B) upon the sale of the insured property by the mortgagor after default, if (i) the sale has been approved by the Secretary, (ii) the mortgagee receives an amount at least equal to the fair market value of the property (with appropriate adjustments), as determined by the Secretary, and (iii) the mortgagor has received appropriate homeownership counseling, as determined by the Secretary; and (2)”.

(b) **CONFORMING AMENDMENTS.**—

(1) **APPLICABILITY.**—Section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) is amended in the third sentence by striking “the effective date of this sentence” and inserting the following: “November 30, 1983 (on or after the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, with respect to the payment of benefits under clause (1)(B) of the preceding sentence),”.

(2) **CROSS-REFERENCES.**—

(A) Section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) is amended immediately before the first proviso in the fifth sentence by striking “foreclosure”.

(B) Section 204(j) of the National Housing Act (12 U.S.C. 1710(j)) is amended by inserting “clause (1)(A) of” before “the second sentence”.

(c) **REGULATIONS.**—In developing regulations to carry out the amendments made by this section, the Secretary of Housing and Urban Development may delegate to mortgagees the authority to make determinations on behalf of the Secretary, and the Secretary shall rely on certifications and post audit reviews to the greatest extent possible.

12 USC 1710
note.

SEC. 1065. MORTGAGE INSURANCE ON HAWAIIAN HOME LANDS.

Section 247 of the National Housing Act (12 U.S.C. 1715z-12), as similarly amended first by the Department of Housing and Urban Development-Independent Agencies Act, 1988 (101 Stat. 1329-191) and later by subsections (a) and (b) of section 413 of the Housing and Community Development Act of 1987 (101 Stat. 1906), is amended to read as if the later amendment had not been enacted.

SEC. 1066. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION.

(a) **DEFINITIONS.**—Section 255(b)(3) of the National Housing Act (12 U.S.C. 1715z-20(b)(3)) is amended by inserting “Depository” before “Institutions”.

(b) **ELIGIBILITY REQUIREMENTS.**—Section 255(d)(3) of the National Housing Act (12 U.S.C. 1715z-20(d)(3)) is amended by striking “and that” and all that follows through “residence”.

SEC. 1067. RECIPROCITY IN APPROVAL OF HOUSING SUBDIVISIONS AMONG FEDERAL AGENCIES.

Section 535 of the Housing Act of 1949 (42 U.S.C. 1490o) is amended—

(1) by inserting “(a)” after the section designation; and

(2) by adding at the end the following new subsections:

“(b) For purposes of complying with subsection (a), the Secretary of Housing and Urban Development shall consider the issuance by the Administrator of Veterans’ Affairs of a certificate of reasonable value for 1 or more properties in a subdivision to be an administrative approval for the entire subdivision. This subsection shall not apply after the expiration of the 1-year period beginning on the date of the enactment of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

“(c) Before the expiration of the period referred to in subsection (b), the Secretary of Housing and Urban Development shall report to the Congress on housing subdivision approval policies and practices, if any, of the Departments of Housing and Urban Development and Agriculture and the Veterans’ Administration. The report shall focus on the administration of environmental laws in connection with any such policies and practices, and shall recommend any statutory, regulatory, and administrative changes needed to achieve total reciprocity for such housing subdivision approvals. The Secretary of Housing and Urban Development shall consult with the foregoing agencies, and such other agencies as the Secretary selects, in preparing the report.”.

SEC. 1068. PERMANENT AUTHORITY TO PURCHASE SECOND MORTGAGES ON MULTIFAMILY PROPERTIES.

(a) **FEDERAL NATIONAL MORTGAGE ASSOCIATION.**—Section 302(b)(5)(A)(ii) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(5)(A)(ii)) is amended by striking “until October 1, 1985,”.

(b) **FEDERAL HOME LOAN MORTGAGE CORPORATION.**—Section 305(a)(4)(A)(ii) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(4)(A)(ii)) is amended by striking “until October 1, 1985,”.

Subtitle E—Community Development and Miscellaneous Programs

SEC. 1081. CITY AND COUNTY CLASSIFICATIONS.

(a) **METROPOLITAN CITY.**—

(1) **RETENTION OF CLASSIFICATION.**—Section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) is amended in the second sentence—

(A) by striking “the population data of the 1980 decennial census” and inserting “a decrease in population”; and

(B) by inserting “or any subsequent fiscal year” after “1983”.

(2) **DEFERRAL OF CLASSIFICATION.**—Section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)), as similarly amended first by the Department of Housing and Urban Development-Independent Agencies Act, 1988 (101 Stat. 1329-193) and later by section 503(a)(2) of the

Termination
date.

Reports.

Housing and Community Development Act of 1987 (101 Stat. 1923), is amended to read as if the later amendment had not been enacted.

(b) **URBAN COUNTY.**—Section 102(a)(6)(A) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(6)(A)) is amended by striking the last comma in clauses (i) and (ii)(I) and inserting a semicolon.

SEC. 1082. CORRECTIONS TO CROSS-REFERENCES.

(a) DEFINITIONS.—

(1) **INCLUSION OF POPULATION IN URBAN COUNTY.**—Section 102(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(d)) is amended by striking “subsection (a)(6)(B)” and inserting “subparagraph (A)(ii) or (D) of subsection (a)(6)”.

(2) **EXCLUSION OF POPULATION FROM URBAN COUNTY.**—The first sentence of section 102(e) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(e)) is amended by striking “subsection (a)(6)(B)(i)” and inserting “subsection (a)(6)(A)(ii)(I)(a)”.

(b) **REALLOCATION OF AMOUNTS.**—Section 106(c)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(c)(1)) is amended—

(1) in the first sentence, by striking “section 104 (a), (b), or (c)” and inserting “subsection (a), (b), (c), or (d) of section 104”;

(2) in the first sentence by striking “section 104(d)” and inserting “section 104(e)”; and

(3) in subparagraph (B), by striking “section 104(d)” and inserting “section 104(e)”.

(c) **ALLOCATIONS TO STATES.**—Section 106(d)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)(3)) is amended—

(1) in subparagraph (C), by striking “subsection (a) or (b)” and inserting “subsection (a), (b), or (d)”;

(2) in subparagraphs (C) and (D), by striking “section 104(d)” each place it appears and inserting “section 104(e)”.

SEC. 1083. CONSERVING NEIGHBORHOODS AND HOUSING BY PROHIBITING DISPLACEMENT.

(a) **CERTIFICATIONS.**—The third sentence of section 104(d)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 4304(d)(1)) is amended to read as follows: “A unit of general local government receiving amounts from a State under section 106(d) shall so certify to the State, and a unit of general local government receiving amounts from the Secretary under section 106(d) shall so certify to the Secretary.”

State and local
governments.
42 USC 5304.

(b) **PLAN REQUIREMENTS.**—Section 104(d)(2)(A)(iii)(II) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)(2)(A)(iii)(II)) is amended by adding “and” at the end.

SEC. 1084. URBAN DEVELOPMENT ACTION GRANTS.

(a) **USE OF REPAID GRANT FUNDS.**—Section 119(f) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(f)) is amended in the penultimate sentence by striking “section 104” and inserting “section 105”.

(b) **CONSIDERATION OF CERTAIN COUNTIES AS CITIES.**—Section 119(n)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(n)(1)), as similarly amended first by the provisions

made effective by section 101(g) of Public Law 99-500 and Public Law 99-591 (100 Stat. 1783-242 and 3341-242) and later by section 515(i) of the Housing and Community Development Act of 1987 (101 Stat. 1934), is amended to read as if the later amendment had not been enacted.

SEC. 1085. NEIGHBORHOOD REINVESTMENT CORPORATION.

Section 604(a)(6) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8103(a)(6)) is amended by striking the second of the two periods at the end.

SEC. 1086. NATIONAL FLOOD INSURANCE PROGRAM.

(a) **CORRECTION OF TYPOGRAPHICAL ERROR.**—Section 1306(c)(1)(A) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(1)(A)) is amended by striking “Following” each place it appears in clauses (i) and (ii) and inserting “following”.

(b) **CORRECTION OF CROSS-REFERENCE.**—Subsections (b) and (c) of section 1370 of the National Flood Insurance Act of 1968 (42 U.S.C. 4121) are each amended by striking “paragraph (1)” and inserting “subsection (a)(1)”.

(c) **SACRAMENTO, CALIFORNIA.**—

(1) **FINDINGS.**—The Congress finds that—

(A) the Sacramento, California, area has had in place a flood control system that has been classified as protecting against floods with recurrence intervals of up to 125 years;

(B) local governmental entities in the Sacramento metropolitan area have been working diligently with the State of California, the Army Corps of Engineers, and the Bureau of Reclamation since the occurrence of a heavy storm in 1986 to formulate and implement a comprehensive plan to provide high level, efficient flood protection to the region;

(C) the Federal Emergency Management Agency, in response to studies by the Army Corps of Engineers indicating increased flood vulnerability attributable to increased estimates of the frequency of large storms in the region, has begun a process of re-analyzing the flood risks in the Sacramento area, and this analysis is likely to result in substantially increased flood elevation requirements under the National Flood Insurance Program;

(D) changed flood elevation requirements attributable to a change in flood elevation determinations by the Director of the Federal Emergency Management Agency will cause severe disruption in the Sacramento region and could precipitate the break-up of the political, institutional, and economic relationships sustaining the high level, comprehensive, flood protection effort;

(E) failure to implement a comprehensive plan would leave substantial portions of the Sacramento area without necessary flood protection, and, further, could impose on the Federal Government various, substantial costs related to emergency responses and damage claims in the event of a major flood;

(F) the Federal purposes embodied in the National Flood Insurance Program to minimize development in flood plains, to minimize damages caused by floods, and to reduce requirements for costly flood protection projects remain valid for the Sacramento metropolitan area, and impose

upon its local governmental jurisdictions an obligation to exercise their authorities to avoid undue exposure to the dangers of floods and to voluntarily comply to the maximum extent practicable, consistent with other purposes of this subsection, with the National Flood Insurance Program standards that are anticipated to be applicable to the Sacramento area following expiration of the period set by paragraph (2);

(G) the City and County of Sacramento have each provided assurances to the Congress that they will not designate any increases in urbanization beyond lands already so designated in their general plans during the period set forth in paragraph (2), and, in addition, that in the exercise of their discretion to approve new development they will give careful consideration to—

- (i) an evacuation-emergency response plan;
- (ii) mechanisms by which to attempt to provide notice to all buyers of new structures;
- (iii) retention of natural floodways; and
- (iv) recommendations to all buyers of new structures to purchase flood insurance;

(H) the City and County of Sacramento, in their discretion, reserve the authority to impose elevation or other requirements for new construction based upon best available flood data if facts indicate the necessity of doing so; and

(I) maintenance of the Federal flood elevation requirements now in effect for the Sacramento area for the limited period set forth in paragraph (2) will facilitate implementation of the high level, comprehensive plan for flood protection in the Sacramento area, and is therefore in the interest of Sacramento, the public safety, and the United States.

(2) FLOOD ELEVATIONS.—Prior to the expiration of 2 years after the date on which the Secretary of the Army submits to the Congress the report on the feasibility study on Northern California Streams, American River Watershed, but not later than 4 years after the date of the enactment of this Act, the provisions of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973 shall apply on the basis of flood map elevation determinations made by the Director of the Federal Emergency Management Agency in effect as of the date of the enactment of this Act to the following areas:

Rivers and
harbors.

(A) the floodplain areas within Sutter and Sacramento Counties, California (collectively known as the "Natomas area"), which are bounded by the Sacramento River, the American River, the Natomas Cross Canal, and the floodplain of the Natomas East Main Drainage Canal;

(B) the floodplains within Sacramento County of Dry Creek, Arcade Creek, and Morrison Creek, to the extent these creeks are affected by the American and Sacramento Rivers, the American River, and the Sacramento River upstream of the City of Freeport, California; and

(C) the City of West Sacramento in Yolo County, California.

(3) BUDGET SUBMISSION.—The President, in submitting his budget for fiscal year 1990, shall include a schedule for completing the study referred to in paragraph (2) as expeditiously as

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practicable and an estimate of the resources required to meet such schedule.

(d) **PLANADA, CALIFORNIA.**—The Director of the Federal Emergency Management Agency shall prepare, or cause to be prepared, a hydrological study of Miles Creek, California, to use as the basis for the establishment of revised base flood elevations in and near the community of Planada, California. Until such time as the revised base flood elevations are established, the flood insurance rate map (Community Panel No. 0601880315A) in effect on September 1, 1988, for the area in and near such community shall remain in effect.

SEC. 1087. HOME MORTGAGE DISCLOSURE.

(a) **APPLICABILITY OF 1987 AMENDMENTS.**—Section 565(a)(4) of the Housing and Community Development Act of 1987 (12 U.S.C. 2802 note) is amended by striking “calendar years beginning after December 31, 1986” and inserting “the portion of calendar year 1988 that begins August 19, 1988, and to each calendar year beginning after December 31, 1988”.

(b) **CORRECTION OF TYPOGRAPHICAL ERROR.**—Paragraphs (1) and (2) of section 306(b) of the Home Mortgage Disclosure Act (12 U.S.C. 2805) are each amended by striking “Section” and inserting “section”.

(c) **CORRECTION OF REFERENCES TO COMMITTEES.**—Section 307(b) of the Home Mortgage Disclosure Act (12 U.S.C. 2806) is amended—

(1) by striking “Committee on Banking, Currency and Housing” and inserting “Committee on Banking, Finance and Urban Affairs”; and

(2) by inserting a comma after “Housing”.

SEC. 1088. LEAD-BASED PAINT POISONING PREVENTION.

(a) **INSPECTION.**—Section 302(d)(1) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)(1)) is amended—

(1) by striking the paragraph caption and inserting the following: “TRANSITIONAL TESTING AND ABATEMENT IN PUBLIC HOUSING RECEIVING CIAP ASSISTANCE.—”;

(2) by striking “section 9” in the first sentence and inserting “section 14”;

(3) by striking subparagraphs (A), (B), and (C) in the first sentence and inserting the following:

“(A) a random sample of dwellings and common areas in all public housing projects assisted under such section; and

“(B) each dwelling in any public housing project in which there is a dwelling determined under subparagraph (A) to have lead-based paint hazards, except that the Secretary shall not require the inspection of each dwelling if the Secretary requires the abatement of the lead-based paint hazards for the surfaces of each dwelling in the public housing project that correspond to the surfaces in the sample determined to have such hazards under subparagraph (A).”;

(4) by striking the second and third sentences and inserting the following: “The Secretary shall require the inspection of all housing subject to this paragraph in accordance with the modernization schedule. A public housing agency may elect to test for lead-based paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c),

including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this Act, and such abatement shall qualify for assistance under section 14 of the United States Housing Act of 1937.”; and

(5) by inserting before the period at the end of the last sentence the following: “, industrial hygienist, or local public health official”.

(b) **ABATEMENT DEMONSTRATION.**—Section 302(d)(2) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)(2)) is amended—

(1) by striking the paragraph caption and inserting the following: “**ABATEMENT DEMONSTRATION PROGRAM.**—”;

(2) in subparagraph (A)—

(A) by inserting after “Urban Development” the following: “and public housing”; and

(B) by adding at the end the following new sentence: “For purposes of the demonstration, a public housing agency may elect to test for lead-based paint using atomic absorption spectroscopy and may elect to abate lead-based paint and dust containing lead under standards more stringent than that in subsection (c), including the abatement of lead-based paint and dust which exceeds the standard of lead permitted in paints by the Consumer Product Safety Commission under this Act, and such abatement shall qualify for assistance under section 14 of the United States Housing Act of 1937.”; and

(3) in subparagraph (B), by inserting after the first sentence the following new sentence: “Based on the demonstration, the Secretary shall prepare and include in the report a comprehensive and workable plan for the cost-effective inspection and abatement of public housing in accordance with paragraph (3), including an estimate of the total cost of abatement in accordance with paragraph (3)(B).”.

(c) **REPORTS.**—Section 302(d)(2)(B) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)(2)(B)) is amended—

(1) in clause (i), by inserting “, including X-ray fluorescence and atomic absorption spectroscopy” before the semicolon;

(2) in clause (ii), by inserting “, including removal, containment, or encapsulation of the contaminated components, procedures which minimize the generation of dust (including the high efficiency vacuum removal of leaded dust), and procedures that provide for offsite disposal of the removed components, in compliance with all applicable regulatory standards and procedures” before the semicolon;

(3) in clause (iii), by inserting “, abatement, and worker protection” before the semicolon;

(4) by striking “and” at the end of clause (v);

(5) by striking the period at the end of clause (vi) and inserting “; and”; and

(6) by adding at the end the following new clause:

“(vii) the merits of an interim containment protocol for public housing dwellings that are determined to have lead-based paint hazards but for which comprehensive improvement assistance under section 14 of the United States Housing Act of 1937 is not available.”.

(d) **PUBLIC HOUSING INSPECTION.**—Section 302(d) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(d)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

“(3) **TESTING AND ABATEMENT OF OTHER PUBLIC HOUSING.**—

“(A) **REQUIRED INSPECTION.**—The Secretary shall require the inspection described in subsection (c) for—

“(i) a random sample of dwellings and common areas in all public housing that is not subject to paragraph (1); and

“(ii) each dwelling in any public housing project in which there is a dwelling determined under clause (i) to have lead-based paint hazards, except that the Secretary shall not require the inspection of each dwelling if the Secretary requires the abatement of the lead-based paint hazards for the surfaces of each dwelling in the public housing project that correspond to the surfaces in the sample determined to have such hazards under clause (i).

“(B) **SCHEDULE.**—The Secretary shall require the inspection of all housing subject to this paragraph prior to the expiration of 5 years after the report is required to be transmitted under paragraph (2)(B). The Secretary may prioritize, within such 5-year period, inspections on the basis of vacancy, age of housing, or projected modernization or rehabilitation. The Secretary shall require abatement and final inspection and certification of such housing in accordance with the last two sentences of paragraph (1).”.

(e) **FUNDING.**—Section 302(f) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(f)) is amended by adding at the end the following new sentence: “The Secretary shall submit annually to the Congress an estimate of the funds required to carry out the provisions of this section with the reports required by paragraphs (2)(B) and (4).”.

(f) **DETECTION TECHNIQUE.**—Section 302(c) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822(c)) is amended—

(1) in the first sentence, by inserting after “fluorescence analyzer” the following: “, atomic absorption spectroscopy,”; and

(2) in the second sentence, by inserting after “A qualified inspector” the following: “or laboratory”.

(g) **CONSULTATION.**—Section 566(b) of the Housing and Community Development Act of 1987 is amended—

(1) in the caption, by inserting “AND CONSULTATION” after “REGULATIONS”; and

(2) in paragraph (3)—

(A) by striking “under this subsection” and inserting “and in preparing reports under this section”; and

(B) in subparagraph (A), by inserting after “Building Sciences” the following: “, the Environmental Protection Agency, the National Institute of Environmental Health Sciences, the Centers for Disease Control, the Consumer Product Safety Commission, major public housing organizations, other major housing organizations,”.

(h) **INTERPRETATION OF SECTION.**—Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) is amended by adding at the end the following new subsection:

“(g) **INTERPRETATION OF SECTION.**—This section may not be construed to affect the responsibilities of the Environmental Protection Agency with respect to the protection of the public health from hazards posed by lead-based paint.”.

SEC. 1089. INTERSTATE LAND SALES FULL DISCLOSURE.

(a) **CORRECTION OF TYPOGRAPHICAL ERROR.**—Section 1402(10) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701(10)) is amended by inserting “and” after the semicolon.

(b) **CORRECTION OF NUMBERING.**—Section 1420 the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1719), is amended by striking “(a)” after the section designation.

SEC. 1090. DESIGNATION OF ENTERPRISE ZONES.

(a) **CRITERIA FOR RANKING NOMINATED AREAS.**—The first sentence of section 701(a)(3)(A) of the Housing and Community Development Act of 1987 (42 U.S.C. 11501(a)(3)(A)) is amended to read as follows: “Except as provided in subparagraph (B), the Secretary shall designate (i) the nominated areas with the highest average ranking with respect to the criteria set forth in subparagraphs (C) and (D) of subsection (c)(3), and the 1 criterion set forth in subparagraph (E)(i) or (E)(ii) of subsection (c)(3) that gives an area a higher ranking; and (ii) for areas described in paragraph (2)(B), the nominated areas with the highest ranking with respect to the 1 criterion set forth in subparagraph (C), (D), (E)(i), or (E)(ii) of subsection (c)(3) that gives an area a higher ranking.”.

(b) **CORRECTION OF CROSS-REFERENCE.**—Section 701(a)(2)(B) of the Housing and Community Development Act of 1987 (42 U.S.C. 11501(a)(2)(B)) is amended by striking “under clause (i)” and inserting “under subparagraph (A)”.

(c) **REGULATIONS.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall revise the regulations issued by the Secretary to carry out title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501 et seq.) by issuing a final regulation, effective upon the date of publication, that carries out the amendments made by this section.

42 USC 11501
note.

SEC. 1091. REPORT ON RECOMMENDED POLICY FOR DEALING WITH RADON IN ASSISTED HOUSING.

Safety.
15 USC 2661
note.

(a) **PURPOSES.**—The purposes of this section are—

(1) to require the Department of Housing and Urban Development to develop an effective departmental policy for dealing with radon contamination that utilizes any Environmental Protection Agency guidelines and standards to ensure that occupants of housing covered by this section are not exposed to hazardous levels of radon; and

(2) to require the Department of Housing and Urban Development to assist the Environmental Protection Agency in reducing radon contamination.

(b) **PROGRAM.**—

(1) **APPLICABILITY.**—The housing covered by this section is—

(A) multifamily housing owned by the Department of Housing and Urban Development;

(B) public housing and Indian housing assisted under the United States Housing Act of 1937;

(C) housing receiving project-based assistance under section 8 of the United States Housing Act of 1937;

(D) housing assisted under section 236 of the National Housing Act; and

(E) housing assisted under section 221(d)(3) of the National Housing Act.

(2) **IN GENERAL.**—The Secretary of Housing and Urban Development shall develop and recommend to the Congress a policy for dealing with radon contamination that specifies programs for education, research, testing, and mitigation of radon hazards in housing covered by this section.

(3) **STANDARDS.**—In developing the policy, the Secretary shall utilize any guidelines, information, or standards established by the Environmental Protection Agency for—

(A) testing residential and nonresidential structures for radon;

(B) identifying elevated radon levels;

(C) identifying when remedial actions should be taken; and

(D) identifying geographical areas that are likely to have elevated levels of radon.

(4) **COORDINATION.**—In developing the policy, the Secretary shall coordinate the efforts of the Department of Housing and Urban Development with the Environmental Protection Agency, and other appropriate Federal agencies, and shall consult with State and local governments, the housing industry, consumer groups, health organizations, appropriate professional organizations, and other appropriate experts.

(5) **REPORT.**—The Secretary shall submit a report to the Congress within 1 year after the date of the enactment of this Act that describes the Secretary's recommended policy for dealing with radon contamination and the Secretary's reasons for recommending such policy. The report shall include an estimate of the housing covered by this section that is likely to have hazardous levels of radon.

(c) **COOPERATION WITH ENVIRONMENTAL PROTECTION AGENCY.**—Within 6 months after the date of the enactment of this Act, the Secretary and the Administrator of the Environmental Protection Agency shall enter into a memorandum of understanding describing the Secretary's plan to assist the Administrator in carrying out the Environmental Protection Agency's authority to assess the extent of radon contamination in the United States and assist in the development of measures to avoid and reduce radon contamination.

(d) **DEFINITIONS.**—For purposes of this section:

(1) **ADMINISTRATOR.**—The term "Administrator" means the Administrator of the Environmental Protection Agency.

State and local
governments.
Business and
industry.
Health care
facilities.
Health care
professionals.

(2) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

(e) AUTHORIZATION.—Funds available for housing covered by this section shall be available to carry out this section with respect to such housing.

Approved November 7, 1988.

LEGISLATIVE HISTORY—H.R. 4352 (S. 2554):

HOUSE REPORTS: No. 100-718, Pt. 1 (Comm. on Energy and Commerce), Pt. 2 (Comm. on Banking, Finance and Urban Affairs), and Pt. 3 (Comm. on Ways and Means); and No. 100-1089 (Comm. of Conference).

SENATE REPORTS: No. 100-393 accompanying S. 2554 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Aug. 3, considered and passed House.

Sept. 28, considered and passed Senate, amended.

Oct. 19, House agreed to conference report.

Oct. 20, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):

Nov. 7, Presidential statement.

Public Law 100-629
100th Congress

An Act

Nov. 7, 1988
[H.R. 4919]

To approve the governing international fishery agreement between the United States and the Union of Soviet Socialist Republics, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Conservation.

16 USC 1823
note.

SECTION 1. SOVIET UNION FISHING AGREEMENT.

That notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the governing international fishery agreement entered into between the Government of the United States and the Government of the Union of Soviet Socialist Republics, as contained in the message to Congress from the President of the United States dated June 22, 1988, is approved by the Congress and shall enter into force and effect with respect to the United States on the date of the enactment of this Act.

SEC. 2. MARINE BIOMEDICAL INSTITUTE.

Appropriation
authorization.

There is authorized to be appropriated such sums as may be necessary for the development of a Marine Biomedical Institute for Advanced Studies, to be located at Woods Hole, Massachusetts.

SEC. 3. GREAT LAKES MAPPING REAUTHORIZATION.

33 USC 883a
note.

Section 3206 of Public Law 100-220 is amended by striking "1988", and inserting instead "1989".

SEC. 4. STORAGE OF FISHING GEAR ON CERTAIN FOREIGN FISHING VESSELS OPERATING IN THE EXCLUSIVE ECONOMIC ZONE.

Section 307 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857) is amended—

- (1) in paragraph (2)(C) by striking "and";
 - (2) by striking the period at the end of paragraph (3) and inserting "; and"; and
 - (3) by adding at the end the following:
 - "(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone, if—
 - "(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or
 - "(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;
- unless such vessel is authorized to engage in fishing in the area in which the vessel is operating."

SEC. 5. NORTH PACIFIC AND BERING SEA FISHERIES ADVISORY BODY.

16 USC 1823
note.

(a) **IN GENERAL.**—The Secretary of State shall establish an advisory body on the fisheries of the North Pacific and the Bering Sea, which shall advise the United States representative to the International Consultative Committee created in accordance with Article XIV of the governing international fishery agreement entered into between the United States and the Union of Soviet Socialist Republics, as contained in the message to Congress from the President of the United States dated June 22, 1988.

(b) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The advisory body established pursuant to this section shall consist of 12 members, as follows:

(A) The Director of the Department of Fisheries of the State of Washington. Washington.

(B) The Commission of the Department of Fish and Game of the State of Alaska. Alaska.

(C) Five members appointed by the Secretary of State from among persons nominated by the Governor of Alaska on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

(D) Five members appointed by the Secretary of State from among persons nominated by the Governor of Washington on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

(2) **NOMINATIONS.**—The Governor of Alaska and the Governor of Washington shall each nominate 10 persons for purposes of paragraph (1). Alaska.
Washington.

(c) **PAY.**—Members of the advisory body established pursuant to this section shall receive no pay by reason of their service as members of the advisory body.

(d) **EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to an advisory body established pursuant to this section.

SEC. 6. USE OF VESSEL IDENTIFICATION EQUIPMENT.

16 USC 1821
note.

(a) The Secretary of State, the Secretary of Commerce, and the Secretary of the department in which the Coast Guard is operating, as appropriate, shall exercise their authority under section 201(c)(2)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) to require the use of transponders or other such appropriate position-fixing and identification equipment on any vessel other than a vessel of the United States engaged in fishing in the United States Exclusive Economic Zone.

(b) The Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating shall report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate within 180 days after the date of enactment of this Act on the results of their compliance with subsection (a). Reports.

SEC. 7. TRANSFER OF THE COAST GUARD CUTTER GLACIER.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall transfer to the State of Oregon. Oregon.

the decommissioned Coast Guard Cutter "Glacier", in the condition and along with the equipment as the Secretary considers appropriate, for use as a maritime museum and display consistent with the long military service and history of the cutter.

Approved November 7, 1988.

LEGISLATIVE HISTORY—H.R. 4919:

HOUSE REPORTS: No. 100-968 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 26, considered and passed House.
Sept. 30, considered and passed Senate, amended.
Oct. 3, 4, House disagreed to Senate amendment.
Oct. 21, Senate receded from its amendment.

(7) in subsection (a)(19), by striking "statement shall include" and all that follows through the period at the end and inserting the following: "statement shall include—

"(A) a statement of the present levels of educational performance of such child,

"(B) a statement of annual goals, including short-term instructional objectives,

"(C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs

"(D) the projected date for initiation and anticipated duration of such services, and

"(E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved."

(8) in subsection (a)(20), by striking "after deducting" and all that follows through the period at the end and inserting the following: "after deducting—

"(A) amounts received—

"(i) under this part,

"(ii) under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, or

"(iii) under title VII of the Elementary and Secondary Education Act of 1965, and

"(B) any State or local funds expended for programs that would qualify for assistance under such part, chapter, or title.";

(9) in subsection (a)(21), by striking "(20 U.S.C. 880b-1(a)(2))";

(10) in subsection (a)(23), by moving subparagraphs (A) through (C) 2 ems to the right, so that the left margin of each such subparagraph is indented 4 ems; and

(11) in subsection (b), by striking "section 602(a)(1))" and inserting "subsection (a)(1))".

(b) **EQUIPMENT AND CONSTRUCTION.**—Section 605 of the Education of All Handicapped Act (20 U.S.C. 1404(a)) is amended—

(1) in subsection (a), by striking "he" and inserting "Secretary"; and

(2) in the first sentence of subsection (b), by inserting a comma after "If".

(c) **GRANTS FOR THE REMOVAL OF ARCHITECTURAL BARRIERS.**—Section 607(a) of the Education of All Handicapped Act (20 U.S.C. 1406(a)) is amended by striking "the Act approved" and all that follows through the period at the end and inserting the following: "the Act entitled 'An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped', approved August 12, 1968 (Public Law 90-249)".

(d) **REGULATIONS.**—Section 608 of the Education of All Handicapped Act (20 U.S.C. 1407) is amended—

(1) in subsection (b), by striking "IEP" and inserting "individualized education program"; and

(2) by striking subsection (c).

SEC. 102. ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN.

(a) **ALLOCATIONS.**—Section 611 of the Education of All Handicapped Act (20 U.S.C. 1411) is amended—

Public Law 100-630
100th Congress

An Act

To make certain technical and conforming amendments to the Education of the Handicapped Act and the Rehabilitation Act of 1973, and for other purposes.

Nov. 7, 1988

[H.R. 5334]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Handicapped Programs Technical Amendments Act of 1988”.

Handicapped
Programs
Technical
Amendments
Act of 1988.
Children and
youth.
State and local
governments.
20 USC 1400
note.

TITLE I—AMENDMENTS TO THE EDUCATION OF THE HANDICAPPED ACT

SEC. 101. GENERAL PROVISIONS.

(a) DEFINITIONS.—Section 602 of the Education of the Handicapped Act (20 U.S.C. 1401) is amended—

(1) by moving paragraphs (1) through (23) of subsection (a) 2 ems to the right, so that the left margin of each such paragraph is indented 4 ems;

(2) by striking subsection (a)(3);

(3) in subsection (a)(6), by striking “Northern Mariana Islands” and inserting “Commonwealth of the Northern Mariana Islands”;

(4) in subsection (a)(11)—

(A) by moving subparagraphs (A) through (E) 2 ems to the right, so that the left margin of each such subparagraph is indented 6 ems;

(B) by inserting “and” at the end of subparagraph (D);

(C) by striking “he” each place it appears in subparagraph (E) and inserting “the Secretary”;

(D) by striking “; and” at the end of subparagraph (E) and inserting a period; and

(E) by striking subparagraph (F);

(5) by adding at the end of subsection (a)(11) the following: “The term includes community colleges receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.”;

(6) in subsection (a)(18), by striking “related services which” and all that follows through the period at the end and inserting the following: “related services that—

“(A) have been provided at public expense, under public supervision and direction, and without charge,

“(B) meet the standards of the State educational agency,

“(C) include an appropriate preschool, elementary, or secondary school education in the State involved, and

“(D) are provided in conformity with the individualized education program required under section 614(a)(5).”;

(1) in subsection (a)(2), by striking "Northern Mariana Islands" and inserting "Commonwealth of the Northern Mariana Islands";

(2) in subsection (a)(5)—

(A) by striking "on the order of any court;" in subparagraph (A)(ii) and inserting "or the order of any court;";

(B) by striking "section 121" in subparagraph (A)(iii) and inserting "subpart 2 of part D of chapter 1 of title 1"; and

(C)(i) by striking "five to seventeen," in subparagraph (B) and inserting "three to seventeen,"; and

(ii) by striking "him" in subparagraph (B) and inserting "the Secretary";

(3) in subsection (e)(1), by striking "Northern Mariana Islands" and inserting "Commonwealth of the Northern Mariana Islands";

(4) in subsection (f)(1), by striking "serviced" and inserting "served"; and

(5) in subsection (f)(2)(B), by inserting a comma after "inclusive".

(b) **ELIGIBILITY.**—Section 612 of the Education of the Handicapped Act (20 U.S.C. 1412) is amended—

(1) by moving paragraphs (1) through (7) 2 ems to the right, so that the left margin of each such paragraph is indented 4 ems;

(2) in paragraph (2), by moving subparagraphs (A) through (E) 2 ems to the right, so that the left margin of each such paragraph is indented 6 ems; and

(3) in paragraph (2)(E), by striking "the amendment" the first place it appears and inserting "any amendment".

(c) **STATE PLANS.**—Section 613 of the Education of the Handicapped Act (20 U.S.C. 1413) is amended—

(1) in the first sentence of subsection (a), by striking "he" and inserting "the Secretary";

(2) in subsection (a)(2), by striking "section 121" and all that follows through "(20 U.S.C. 1262(a)(4)(B))," and inserting "subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 and section 202(1) of the Carl D. Perkins Vocational Education Act,";

(3) in subsection (a)(3), by striking "a description of programs and procedures" and all that follows through the semicolon at the end and inserting the following: "a description of programs and procedures for—

"(A) the development and implementation of a comprehensive system of personnel development, which shall include—

"(i) inservice training of general and special educational instructional and support personnel,

"(ii) detailed procedures to assure that all personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained, and

"(iii) effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and

"(B) adopting, where appropriate, promising educational practices and materials developed through such projects;"

(4) by amending subsection (a)(4)(B) to read as follows:

“(B) that—

“(i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized education program as required by this part) at no cost to their parents or guardian, if such children are placed or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all handicapped children within such State; and

“(ii) in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have the rights they would have if served by such agencies

(5) by amending subsection (a)(7) to read as follows:

“(7) provide for—

“(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary’s functions under this part, and

“(B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part;”;

(6) in subsection (a)(9), by striking “under this part” the first place it appears and all that follows through the semicolon at the end and inserting the following: “under this part—

“(A) will not be commingled with State funds, and

“(B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to handicapped children under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement of this subparagraph if the Secretary concurs with the evidence provided by the State;”;

(7) in subsection (a)(12), by striking “administrators of programs” and all that follows through the semicolon at the end and inserting the following: “administrators of programs for handicapped children, which—

“(A) advises the State educational agency of unmet needs within the State in the education of handicapped children

“(B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part, and

“(C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of the responsibilities of the Secretary under section 618;”;

Public
information.

(8) in subsection (a)(13), by striking "appropriate State and local agencies" and all that follows through the period at the end and inserting the following: "appropriate State and local agencies to—

"(A) define the financial responsibility of each agency for providing handicapped children and youth with free appropriate public education, and

"(B) resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement from other agencies or otherwise implement the provisions of the agreement; and";

(9) in subsection (a)(14)—

(A) by inserting "set forth" after the paragraph designation; and

(B) in subparagraph (A), by striking "he or she is" and inserting "such personnel are";

(10) in subsection (c)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by inserting "(1)" after the subsection designation;

(C) by indenting the first line of the matter following subparagraph (B) (as redesignated by paragraph (1) of this subsection) 2 ems to the right and designating such matter as paragraph (2); and

(D) by striking "the preceding sentence" where it appears in paragraph (2) (as designated by subparagraph (C) of this paragraph) and inserting "paragraph (1)";

(11) in subsection (d)(3)(A), by striking "his" and inserting "the Secretary's";

(12) in subsection (d)(3)(B)—

(A) by striking "he" and inserting "the Secretary"; and

(B) by striking "his" and inserting "the Secretary's";

(13) in subsection (d)(3)(C), by striking "his" in the first sentence and inserting "the Secretary's"; and

(14) in subsection (e), by striking "; and" at the end and inserting a period.

LOCAL EDUCATIONAL AGENCY APPLICATIONS.—Section 614 of the Education of the Handicapped Act (20 U.S.C. 1414) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2) provide satisfactory assurance that—

"(A) the control of funds provided under this part, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this part, and that a public agency will administer such funds and property;

"(B) Federal funds expended by local educational agencies and intermediate educational units for programs under this part—

"(i) shall be used to pay only the excess costs directly attributable to the education of handicapped children; and

"(ii) shall be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant such State and local funds; and

“(C) State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas that, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction that are not receiving funds under this part;”;

(2) by amending subsection (a)(3) to read as follows:

“(3) provide for—

“(A) furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the State educational agency to perform its duties under this part, including information relating to the educational achievement of handicapped children participating in programs carried out under this part; and

“(B) keeping such records, and affording such access to such records, as the State educational agency may find necessary to assure the correctness and verification of such information furnished under subparagraph (A);”;

(3) in subsection (a)(5)—

(A) by striking “establish,” and inserting “establish”; and

(B) by inserting a comma after “if appropriate”.

(e) **PROCEDURAL SAFEGUARDS.**—Section 615 of the Education of the Handicapped Act (20 U.S.C. 1415) is amended—

(1) in subsection (b)(1)(D), by striking “inform” and inserting “informs”; and

(2) in subsection (d), by striking “shall be accorded” and all that follows through the period at the end and inserting the following: “shall be accorded—

“(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children,

“(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

“(3) the right to a written or electronic verbatim record of such hearing, and

“(4) the right to written findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) and shall also be transmitted to the advisory panel established pursuant to section 613(a)(12)).”

(f) **WITHHOLDING AND JUDICIAL REVIEW.**—Section 616 of the Education of the Handicapped Act (20 U.S.C. 1416) is amended—

(1) in subsection (a)—

(A) by striking “pursuant to the State plan” and all that follows through “If the Secretary withholds” and inserting the following: “pursuant to the State plan, the Secretary—

“(A) shall, after notifying the State educational agency, withhold any further payments to the State under this part, and

“(B) may, after notifying the State educational agency, withhold further payments to the State under the Federal programs specified in section 613(a)(2) within the Secretary’s jurisdiction, to the extent that funds under such programs are available for the provision of assistance for the education of handicapped children.

Records.

Public
information.

If the Secretary withholds”;

(B) by striking “he” in the second sentence and inserting “the Secretary”;

(C) by striking “his jurisdiction” in the penultimate sentence and inserting “the Secretary’s jurisdiction”; and

(2) in subsection (b)(1), by striking “on which he based his action” and inserting “upon which the Secretary’s action was based”; and

(3) in subsection (b)(2), by striking “his” and inserting “the Secretary’s”.

(g) ADMINISTRATION.—Section 617 of the Education of the Handicapped Act (20 U.S.C. 1417) is amended—

(1) in subsection (a)(1), by striking “his” and inserting “the Secretary’s”;

(2) in subsection (a)(1)(D), by inserting after “1975” the following: “and every year thereafter”; and

(3) in subsection (d), by striking “his” and inserting “the Secretary’s”.

(h) EVALUATION.—Section 618 of the Education of the Handicapped Act (20 U.S.C. 1418) is amended—

(1) by amending subsection (a) to read as follows:

“(a) The Secretary shall, directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations—

Grants.
Contracts.

“(1) to assess progress in the implementation of this Act;

“(2) to assess the impact and effectiveness of State and local efforts, and efforts by the Secretary of the Interior, to provide—

“(A) free appropriate public education to handicapped children and youth; and

“(B) early intervention services to handicapped infants and toddlers; and

“(3) to provide—

“(A) Congress with information relevant to policymaking; and

“(B) State, local, and Federal agencies, including the Department of the Interior, with information relevant to program management, administration, and effectiveness with respect to such education and early intervention services.”;

(2) in subsection (b)(1), by striking “intervention services” and all that follows through the comma at the end and inserting the following: “intervention services—

“(A) in age groups 0-2 and 3-5, and

“(B) in age groups 6-11, 12-17, and 18-21,

by disability category.”;

(3) in subsection (b)(3), by striking “or otherwise” and all that follows through the comma at the end and inserting the following: “or otherwise—

“(A) in age group 3-5, and

“(B) in age groups 6-11, 12-17, and 18-21,

by disability category and anticipated services for the next year.”;

(4) in subsection (b)(6), by striking “handicapped children and youth” and all that follows through the period at the end and inserting the following: “handicapped children and youth—

“(A) in age group 3-5, and

“(B) in age groups 6-11, 12-17, and 18-21,

and by disability category.”;

(5) in subsection (d)(4), by striking "resources" and inserting "resource";

(6) in subsection (f)(4), by striking "a free appropriate public education" and all that follows through the period at the end and inserting the following: "a free appropriate public education to—

"(A) handicapped infants, toddlers, children, and youth in rural areas,

"(B) handicapped migrants,

"(C) handicapped Indians (particularly programs operated under section 611(f)),

"(D) handicapped Native Hawaiian (and other native Pacific basin) children and youth, and

"(E) handicapped infants, toddlers, children, and youth with limited English proficiency."; and

(7) in subsection (f)(5)—

(A) by striking "National Council for the Handicapped" and inserting "National Council on Disability"; and

(B) by inserting "the Secretary shall include" before "a description of".

(i) **PRESCHOOL GRANTS.**—Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419) is amended—

(1) in subsection (a)(2)(A)(ii)(II), by inserting "increase in the" after "multiplied by the estimated";

(2) in subsection (a)(2)(E), by striking "clause (ii)(II) of the applicable subparagraph,";

(3) in subsection (b)(2)(A), by striking "\$656,000,000, and" and inserting "\$656,000,000, or";

(4) in subsection (c)(3)(B)—

(A) by striking "the amount available under subsection (a)(2)(A)(ii)(II)" and inserting "the amount of such funds"; and

(B) by striking "aggregate number of handicapped children" and all that follows through "related services" and inserting "aggregate number of such children"; and

(5) by adding at the end the following new subsection:

"(f) Notwithstanding any other provision of law, unless enacted in express limitation of this subsection, amounts appropriated under this section for fiscal years 1987 and 1988 and received by a State whose allotment for the succeeding fiscal year is adjusted downwards under subsection (a)(2)(E) shall remain available for obligation by such State, and by local educational agencies and intermediate educational units in such State, during the 2 fiscal years succeeding the fiscal year for which such amounts were appropriated."

SEC. 103. CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF HANDICAPPED INDIVIDUALS.

(a) **IN GENERAL.**—The part heading for part C of the Education of the Handicapped Act (20 U.S.C. 1421 et seq.) is amended to read as follows:

"PART C—CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF HANDICAPPED INDIVIDUALS".

(b) **REGIONAL RESOURCE AND FEDERAL CENTERS.**—Section 621 of the Education of the Handicapped Act (20 U.S.C. 1421) is amended—

(1) in subsection (a), by striking "appropriate State agencies" in the second sentence and inserting "appropriate public agencies"; and

(2) in subsection (e), by striking "for this section" and all that follows through "subsection (a)" and inserting "in the previous fiscal year for regional resource centers under subsection (a) shall be made available for such centers".

) SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH.—Section of the Education of the Handicapped Act (20 U.S.C. 1422) is amended—

(1) in subsection (a)(1)(B), by inserting a comma after "youth"; and

(2) in subsection (c)(2)(B), by striking "subpart 2" and all that follows through "of 1981" and inserting "subpart 2 of part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965".

) EARLY EDUCATION FOR HANDICAPPED CHILDREN.—Section 623 of Education of the Handicapped Act (20 U.S.C. 1423) is amended—

(1) in subsection (a)(1), by striking "designed to" and all that follows through the period at the end and inserting the following: "designed to—

"(A) facilitate the intellectual, emotional, physical, mental, social, speech, language development, and self-help skills of such children,

"(B) encourage the participation of the parents of such children in the development and operation of any such program,

"(C) acquaint the community to be served by any such program with the problems and potentialities of such children,

"(D) offer training about exemplary models and practices to State and local personnel who provide services to handicapped children from birth through age 8, and

"(E) support the adoption of exemplary models and practices in States and local communities.";

(2) in subsection (d), by inserting "or" before "enter"; and

(3) in subsection (e), by striking "application" and inserting "applications".

) PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN.—Section of the Education of the Handicapped Act (20 U.S.C. 1424) is amended—

(1) in subsection (a)(2), by striking the comma following "improvements in";

(2) in subsection (a)(3), by inserting "and youth" after "such children";

(3) in subsection (b)—

(A) by striking "making grants and contracts" and inserting "making grants and entering into contracts and cooperative agreements"; and

(B) by striking "such grants and contracts" and inserting "such grants, contracts, or cooperative agreements"; and

(4) in subsection (c)—

(A) by striking the comma following "programs"; and

(B) by striking "nation" and inserting "Nation".

) POSTSECONDARY EDUCATION.—Section 625 of the Education of Handicapped Act (20 U.S.C. 1424a) is amended—

- (1) in subsection (a)(4), by striking “application” and inserting “applications”; and
 - (2) in subsection (a)(5), by striking “dispensed throughout the nation” and inserting “dispersed throughout the Nation”.
- (g) **SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH.**—Section 626 of the Education of the Handicapped Act (20 U.S.C. 1425) is amended—
- (1) in subsection (a)—
 - (A) by striking “(Public Law 97-300)” in the first sentence; and
 - (B) by striking “through the Nation” in the second sentence and inserting “throughout the Nation”;
 - (2) in subsection (b)(6)—
 - (A) by striking “between” and inserting “among”; and
 - (B) by inserting “and” before “public employment”;
 - (3) in subsection (b)(10), by striking “specifically” and inserting “specially”; and
 - (4) in subsection (c), by inserting “its activities” after “coordinate”.

SEC. 104. TRAINING PERSONNEL FOR THE EDUCATION OF HANDICAPPED INDIVIDUALS.

(a) **IN GENERAL.**—The part heading for part D of the Education of the Handicapped Act (20 U.S.C. 1431 et seq.) is amended to read as follows:

“PART D—TRAINING PERSONNEL FOR THE EDUCATION OF HANDICAPPED INDIVIDUALS”.

(b) **GRANTS FOR PERSONNEL TRAINING.**—Section 631 of the Education of the Handicapped Act (20 U.S.C. 1431) is amended—

- (1) in subsection (a)(1), by striking “(including the university-affiliated” and all that follows through “program)” in the matter that precedes subparagraph (A) and inserting “(including university affiliated programs and satellite centers participating in programs under part D of the Developmental Disabilities Assistance and Bill of Rights Act)”;
- (2) in subsection (a)(2)(A), by striking “In making grants” and all that follows through “such grants” and inserting “The Secretary shall base the award of grants under paragraph (1)”;
- (3) in subsection (b), by inserting “, State agencies,” after “higher education”;
- (4) in subsection (c)(2)(A)—
 - (A) by striking “on which a majority” both places it appears and inserting “of which a majority”; and
 - (B) by striking the comma and inserting a semicolon; and
- (5) in subsection (c)(5)(D), by striking “individualized educational program” and inserting “individualized education program”.

(c) **GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS.**—Section 632 of the Education of the Handicapped Act (20 U.S.C. 1432) is amended to read as follows:

**GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR
TRAINEESHIPS**

Sec. 632. (a) The Secretary shall make a grant of sufficient size scope to each State educational agency for the purposes described in subsection (c) and, in any State in which the State educational agency does not apply for such a grant, to an institution of higher education within such State for such purposes.

(b) The Secretary may also make a limited number of grants to State educational agencies on a competitive basis for the purposes described in subsection (c). In any fiscal year, the Secretary may not expend for purposes of this subsection an amount that exceeds 10 percent of the amount expended for purposes of this section in the preceding fiscal year.

(c) Grants made under this section shall be for the purpose of assisting States in establishing and maintaining preservice and inservice programs to prepare personnel to meet the needs of handicapped infants, toddlers, children, and youth or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under section 613 under section 676(b)(8)."

(d) CONTINUATION GRANTS.—Notwithstanding section 632 of the Education of the Handicapped Act (as amended by subsection (c)), the Secretary of Education may make continuation grants for the fiscal year 1989 to institutions of higher education that received competitive grants for the fiscal year 1987.

20 USC 1432
note.

(e) CLEARINGHOUSE.—Section 633(c)(2) of the Education of the Handicapped Act (20 U.S.C. 1433(c)(2)) is amended by inserting "of information" after "Dissemination".

105. RESEARCH IN THE EDUCATION OF HANDICAPPED INDIVIDUALS.

(a) IN GENERAL.—The part heading for part E of the Education of the Handicapped Act (20 U.S.C. 1441 et seq.) is amended to read as follows:

**"PART E—RESEARCH IN THE EDUCATION OF HANDICAPPED
INDIVIDUALS".**

(b) RESEARCH AND DEMONSTRATION PROJECTS IN EDUCATION OF HANDICAPPED CHILDREN.—Section 641 of the Education of the Handicapped Act (20 U.S.C. 1441) is amended—

(1) in subsection (a), by striking "children and youth" each place it appears and inserting "children, and youth";

(2) in subsection (a)(6), by inserting a comma after "scales"; and

(3) in subsection (e)—

(A) by striking "National Institute of Handicapped Research" and inserting "National Institute on Disability and Rehabilitation Research"; and

(B) by striking "National Council on the Handicapped" and inserting "National Council on Disability".

(c) PANELS OF EXPERTS.—Section 643(a)(1) of the Education of the Handicapped Act (20 U.S.C. 1443(a)(1)) is amended by striking "the handicapped" and inserting "handicapped individuals".

SEC. 106. INSTRUCTIONAL MEDIA FOR HANDICAPPED INDIVIDUALS.

(a) **IN GENERAL.**—The part heading for part F of the Act is amended to read as follows:

“PART F—INSTRUCTIONAL MEDIA FOR HANDICAPPED INDIVIDUALS”.

(b) **PURPOSES.**—Section 651 of the Education of the Handicapped Act (20 U.S.C. 1451) is amended to read as follows:

“PURPOSES

“Sec. 651. The purposes of this part are to promote—

“(1) the general welfare of deaf individuals by—

“(A) bringing to such individuals understanding and appreciation of those films that play such an important part in the general and cultural advancement of hearing individuals;

“(B) providing through these films enriched educational and cultural experiences through which deaf individuals can be brought into better touch with the realities of their environment; and

“(C) providing a wholesome and rewarding experience that deaf individuals may share together; and

“(2) the educational advancement of handicapped individuals by—

“(A) carrying on research in the use of educational media for handicapped individuals;

“(B) producing and distributing educational media for the use of handicapped individuals, their parents, their actual or potential employers, and other individuals directly involved in work for the advancement of handicapped individuals; and

“(C) training individuals in the use of educational media for the instruction of handicapped individuals.”.

(c) **CAPTIONED FILMS AND EDUCATIONAL MEDIA FOR HANDICAPPED INDIVIDUALS.**—Section 652 of the Education of the Handicapped Act (20 U.S.C. 1452) is amended—

(1) by amending the section heading of such section to read as follows:

“CAPTIONED FILMS AND EDUCATIONAL MEDIA FOR HANDICAPPED INDIVIDUALS”;

(2) by striking “persons” each place it appears and inserting “individuals”;

(3) by striking “the handicapped” each place it appears and inserting “handicapped individuals”;

(4) in subsection (b)(2)—

(A) by striking “purchased” and inserting “purchase”;

and

(B) by striking “to” and inserting “for”;

(5) in subsection (b)(5), by striking “he” and inserting “the Secretary”;

(6) in subsection (b)(6), by striking “and” the second place it appears;

(7) in subsection (b)(8), by striking “the deaf” and inserting “deaf individuals”; and

(8) in subsection (c), by striking "deaf people" each place it appears and inserting "deaf individuals".

C. 107. TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR HANDICAPPED INDIVIDUALS.

a) IN GENERAL.—The part heading for part G of the Education of the Handicapped Act (20 U.S.C. 1461 et seq.) is amended to read as follows:

PART G—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR HANDICAPPED INDIVIDUALS".

b) FINANCIAL ASSISTANCE.—The second sentence of section 661 of the Education of the Handicapped Act (20 U.S.C. 1461) is amended—

(1) by striking "subsection" and inserting "section"; and

(2) by striking "the handicapped" each place it appears and inserting "handicapped individuals".

C. 108. HANDICAPPED INFANTS AND TODDLERS.

a) FINDINGS AND POLICY.—Section 671 of the Education of the Handicapped Act (20 U.S.C. 1471) is amended—

(1) in subsection (a)(4), by striking "infants and toddlers with handicaps" and inserting "handicapped infants and toddlers"; and

(2) in subsection (b)(3), by striking "its" and inserting "their".

b) DEFINITIONS.—Section 672 of the Education of the Handicapped Act (20 U.S.C. 1472) is amended—

(1) in paragraph (1)(A), by striking "Cognitive" and inserting "cognitive";

(2) in paragraph (2), by striking "Early intervention services" and inserting "The term 'early intervention services'"; and

(3) in paragraph (2)(C), by striking "psycho-social" and inserting "psychosocial".

c) CONTINUING ELIGIBILITY.—Section 675 of the Education of the Handicapped Act (20 U.S.C. 1475) is amended—

(1) in subsection (a), by striking "assurances" and inserting "an assurance"; and

(2) in subsection (b)(1)(C), by striking "with respect to" and inserting "in order to comply with".

d) REQUIREMENTS FOR STATEWIDE SYSTEM.—Section 676 of the Education of the Handicapped Act (20 U.S.C. 1476) is amended—

(1) in subsection (b)(5)—

(A) by inserting "of this Act" after "part B"; and

(B) by striking "the participation by" and inserting "participation by"; and

(2) in subsection (b)(12), by striking "and".

e) INDIVIDUALIZED FAMILY SERVICE PLAN.—Section 677 of the Education of the Handicapped Act (20 U.S.C. 1477) is amended—

(1) in subsection (a), by striking "infant" the second place it appears in the matter preceding paragraph (1) and inserting "infant's";

(2) in subsection (b)—

(A) by striking "6 month-intervals" and inserting "6-month intervals"; and

- (B) by striking “infant and toddler” and inserting “infant or toddler”;
- (3) in subsection (d)(1), by striking “psycho-social” and inserting “psychosocial”;
- (4) in subsection (d)(3)—
- (A) by striking “infant and toddler” and inserting “infant or toddler”; and
- (B) by striking “are being made” and inserting “is being made”;
- (5) in subsection (d)(6), by striking “infant’s and toddler’s” and inserting “infant’s or toddler’s”; and
- (6) in subsection (d)(7), by inserting “of this Act” after “part B”.
- (g) **STATE APPLICATION AND ASSURANCES.**—Section 678 of the Education of the Handicapped Act (20 U.S.C. 1478) is amended—
- (1) in subsection (a)(3), by striking “and”; and
- (2) in subsection (a)(5), by striking “for the fifth and succeeding fiscal years” and inserting a comma and “for the fifth and succeeding fiscal years.”.
- (h) **USES OF FUNDS.**—Section 679 of the Education of the Handicapped Act (20 U.S.C. 1479) is amended—
- (1) in paragraph (1), by inserting “and their families” after “toddlers”; and
- (2) in paragraph (2), by inserting “and their families” after “toddlers”.
- (i) **PROCEDURAL SAFEGUARDS.**—Section 680 of the Education of the Handicapped Act (20 U.S.C. 1480) is amended—
- (1) in paragraph (3), by striking “and a guardian” and inserting “or a guardian”;
- (2) in paragraph (4), by striking “infant and toddlers” and inserting “infant or toddler”; and
- (3) in paragraph (7), by striking “if applying for initial services” and inserting a comma and “if applying for initial services.”.
- (j) **PAYOR OF LAST RESORT.**—Section 681(a) of the Education of the Handicapped Act (20 U.S.C. 1481(a)) is amended by striking “the delay” and inserting “a delay”.
- (k) **STATE INTERAGENCY COORDINATING COUNCIL.**—Section 682 of the Education of the Handicapped Act (20 U.S.C. 1482) is amended—
- (1) in subsection (b)(4), by striking “and”;
- (2) in subsection (b)(5), by striking “and others selected by the Governor.” and inserting a comma and “and”; and
- (3) by adding at the end of subsection (b) a new paragraph (6) to read as follows:
- “(6) others selected by the Governor.”.

20 USC 1419
note.

SEC. 109. SPECIAL RULE FOR FISCAL YEAR 1987 PRESCHOOL GRANTS.

(a) **SPECIAL RULE.**—Notwithstanding section 412(b)(2) of the General Education Provisions Act, a State educational agency may use funds made available in fiscal year 1986 under section 619 of the Education of the Handicapped Act for expenditure in fiscal year 1987 in accordance with the statutory and regulatory provisions relating to such program that were in effect for fiscal year 1986 and the application submitted by such agency for such program for such fiscal year.

(b) **EFFECTIVE DATE.**—This section shall be effective as of October 1, 1987.

C. 110. PRESCHOOL GRANTS.20 USC 1419
note.

The provisions of section 300.300(b)(3) of title 34, Code of Federal Regulations, shall not apply with respect to children aged 3 through inclusive, in any State for any fiscal year for which the State receives a grant under section 619(a)(1) of the Education of the Handicapped Act.

TITLE II—AMENDMENTS TO THE REHABILITATION ACT OF 1973

C. 201. GENERAL PROVISIONS.

(a) REHABILITATION SERVICES ADMINISTRATION.—The last sentence of section 3(a) of the Rehabilitation Act of 1973 (29 U.S.C. 702(a)) is amended by striking “National Council on the Handicapped” and inserting “National Council on Disability”.

(b) CONSOLIDATED REHABILITATION PLAN.—Section 6 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in subsection (a), by striking “the Developmental Disabilities Services and Facilities Construction Amendments of 1970” and inserting “the Developmental Disabilities Assistance and Bill of Rights Act”; and

(2) in subsection (b)—

(A) by striking “the Developmental Disabilities Services and Facilities Construction Amendments of 1970” in the first sentence and inserting “the Developmental Disabilities Assistance and Bill of Rights Act”; and

(B) by striking the last sentence and inserting the following: “If the Secretary finds that all such requirements are satisfied, the Secretary may—

“(1) approve the plan to serve in all respects as the substitute for the separate plans which would otherwise be required with respect to each of the programs included therein; or

“(2) advise the State to submit separate plans for such programs.”.

(c) DEFINITIONS.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended—

(1) in paragraph (2), by inserting a comma after “unit of general local government”;

(2) in paragraph (5)(B), by inserting a comma after “employability”;

(3) in paragraph (5)(C), by striking “skill” and inserting “skills”;

(4) in paragraph (5)(G)(i), by striking “such individual” the second place it appears;

(5) by amending paragraph (13)(B) to read as follows: “(B) testing, fitting, or training in the use of prosthetic and orthotic devices,”;

(6) by amending paragraph (13)(F) to read as follows: “(F) psychiatric, psychological, and social services,”;

(7) in paragraph (13)(L), by striking “provisions” and inserting “provision”; and

(8) in paragraph (15)(A), by striking “, for purposes of this Act”.

(d) **NONDUPLICATION.**—Section 10 of the Rehabilitation Act of 1973 (29 U.S.C. 709) is amended in the last sentence by inserting a comma after “any other provision of this Act”.

(e) **ADMINISTRATION OF THE ACT.**—Section 12(c) of the Rehabilitation Act of 1973 (29 U.S.C. 711(c)) is amended by striking “his” and inserting “the Commissioner’s”.

(f) **EVALUATION.**—Section 14 of the Rehabilitation Act of 1973 (29 U.S.C. 713) is amended—

(1) in subsection (a), by inserting a comma after “earnings” in the third sentence; and

(2) in subsection (c), by striking “evaluation” and inserting “evaluations”.

(g) **REVIEW OF APPLICATIONS.**—The first sentence of section 18 of the Rehabilitation Act of 1973 (29 U.S.C. 717) is amended—

(1) by inserting a comma after “this Act”; and

(2) by inserting a comma after “conferences”.

SEC. 202. VOCATIONAL REHABILITATION SERVICES.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Section 100 of the Rehabilitation Act of 1973 (29 U.S.C. 720) is amended—

(1) in subsection (b), by striking paragraph (3);

(2) in subsection (c)—

(A) by striking “price index” each place it appears and inserting “Consumer Price Index”; and

(B) by striking “subsection” in paragraph (3) and inserting “section”; and

(3) by amending subsection (d)(1) to read as follows:

“(d)(1)(A) Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year—

“(i) of the authorization of appropriations for the program authorized by the State grant program under part B of this title; or

“(ii) of the duration of the program authorized by the State grant program under part B of this title;

has passed legislation which would have the effect of extending the authorization or duration (as the case may be) of such program, such authorization is automatically extended for one additional year for the program authorized by this title.

“(B) The amount authorized to be appropriated for the additional fiscal year described in subparagraph (A) shall be an amount equal to the amount appropriated for such program for fiscal year 1991, or the amount authorized to be appropriated for such program for fiscal year 1991, whichever is higher, plus the amount of the Consumer Price Index addition determined under subsection (c) for the immediately preceding fiscal year.”

(b) **STATE PLANS.**—Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended—

(1) in paragraph (1)(A)(i)—

(A) by inserting a comma after “where”;

(B) by inserting a comma after “law”; and

(C) by striking the comma following “adult blind”;

(2) in paragraph (4), by striking “him” and inserting “the Commissioner”;

(3) in paragraph (5)(A), by striking “individuals with handicaps with the most severe handicaps” and inserting “individuals with the most severe handicaps”;

- (4) in paragraph (5)(A)(i), by inserting a comma after “provided”;
 - (5) in paragraph (5)(A)(ii), by inserting a comma after “goals” the first place it appears;
 - (6) in paragraph (7)(B), by striking “utilized in” and inserting “utilized therein”;
 - (7) in paragraph (9)—
 - (A) by striking “him” and inserting “the Commissioner”;
 - and
 - (B) by striking “his” and inserting “the Commissioner’s”;
 - (8) in paragraph (13)(A)—
 - (A) by inserting “who is” before “disabled”; and
 - (B) by striking “his” and inserting “the employee’s”;
 - (9) in paragraph (13)(B), by striking “and the proximate cause” and inserting “if the proximate cause”;
 - (10) by amending paragraph (15) to read as follows:

provide for continuing statewide studies of the needs of individuals with handicaps and how these needs may be most effectively met, including—

 - “(A) conducting a full needs assessment for serving individuals with severe handicaps;
 - “(B) an assessment of the capacity and condition of rehabilitation facilities, plans for improving such facilities, and policies for the use thereof by the State agency; and
 - “(C) review of the efficacy of the criteria employed with respect to ineligibility determinations described in paragraph (9)(C) of this subsection with a view toward the relative need for services to significant segments of the population of individuals with handicaps and the need for expansion of services to those individuals with the most severe handicaps;”;
 - (11) in paragraph (20), by striking “handicapped American Indians” and inserting “American Indians with handicaps”.
- INDIVIDUALIZED WRITTEN REHABILITATION PROGRAM.**—Section of the Rehabilitation Act of 1973 (29 U.S.C. 722) is amended—
- (1) in the last sentence of subsection (a), by striking “including recourse” and all that follows through “this section,” and inserting “including, where appropriate, recourse to the processes set forth in subsections (b)(2) and (d) of this section, and the availability of services provided under section 112,”;
 - (2) in subsection (b)(1)(H), by striking “severely handicapped individuals” and inserting “individuals with severe handicaps”;
 - (3) in subsection (b)(2)—
 - (A) by inserting a comma after “annually”; and
 - (B) by inserting a comma after “(or)”;
 - (4) in subsection (c)(2), by inserting “is” after “thus”.
- SCOPE OF VOCATIONAL REHABILITATION SERVICES.**—Section 103 of the Rehabilitation Act of 1973 (29 U.S.C. 723) is amended—
- (1) in subsection (a)(1)—
 - (A) by striking the comma after “related services”; and
 - (B) by striking “where appropriate,” and all that follows through “or both,” and inserting the following: “where appropriate—
 - “(A) an evaluation by personnel skilled in rehabilitation engineering technology; and
 - “(B) an examination by a physician skilled in the diagnosis and treatment of mental or emotional disorders, or by

a licensed psychologist in accordance with State laws and regulations, or both;"; and

(2) in subsection (a)(2), by striking "individuals maintain" and inserting "individuals to maintain".

(e) **PAYMENTS TO STATES FOR BASIC VOCATIONAL REHABILITATION SERVICES.**—(1) Section 111 of the Rehabilitation Act of 1973 (29 U.S.C. 731) is amended by striking "SEC. 111. SEC. 111." and inserting "SEC. 111."

(2)(A) Section 111(a)(2)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 731(a)(2)(B)) is amended to read as follows:

"(B) For fiscal year 1990 and each fiscal year thereafter, the amount otherwise payable to a State for a fiscal year under this section shall be reduced by the amount by which expenditures from non-Federal sources under the State plan under this title for the previous fiscal year are less than the average of the total of such expenditures for the three fiscal years preceding that previous fiscal year."

Effective date.

(B) The amendment made by subparagraph (A) shall take effect on October 1, 1989.

(3) Section 111(b)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 731(b)(1)) is amended by striking the comma following "such other investigation".

(f) **CLIENT ASSISTANCE PROGRAM.**—Section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732) is amended—

(1) in subsection (a), by striking "handicapped individuals" in the last sentence and inserting "individuals with handicaps";

(2) in subsection (b), by striking the comma following "client assistance program";

(3) by adding at the end of subsection (c) the following new paragraph:

"(4) For the purpose of this subsection, the term 'Governor' means the chief executive of the State.";

(4) in subsection (g)(1), by striking the comma after "consultants of";

(5) in subsection (g)(4), by striking "his" and inserting "the Secretary's";

(6) in subsection (h)(3)(C), by striking "this reauthorization" each place it appears and inserting "the date of the enactment of the Rehabilitation Amendments of 1984"; and

(7) in subsection (i), by inserting a comma after "1991".

(g) **STATE ALLOTMENTS.**—Section 120(a) of the Rehabilitation Act of 1973 (29 U.S.C. 740(a)) is amended by striking "(1)".

(h) **PAYMENTS TO STATES FOR INNOVATION AND EXPANSION.**—Section 121(a)(3) of the Rehabilitation Act of 1973 (29 U.S.C. 741(a)(3)) is amended by striking "handicapped youth and adults" and inserting "both youths with handicaps and adults with handicaps".

(i) **VOCATIONAL REHABILITATION SERVICES GRANTS.**—Section 130 of the Rehabilitation Act of 1973 (29 U.S.C. 750) is amended—

(1) in the first sentence of subsection (a)—

(A) by inserting a comma after "part"; and

(B) by striking "handicapped American Indians" and inserting "American Indians with handicaps";

(2) in subsection (b)(1)(B), by striking "handicapped American Indians" and inserting "American Indians with handicaps"; and

(3) by striking subsection (d) and redesignating subsection (e) as subsection (c).

STUDY OF NEEDS OF AMERICAN INDIANS WITH HANDICAPS.—Section 132 of the Rehabilitation Act of 1973 (29 U.S.C. 751) is redesignated as section 131.

29 USC 752.

203. RESEARCH AND TRAINING.

a) AUTHORIZATION OF APPROPRIATIONS.—Section 201(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 761(a)(1)) is amended by inserting a comma after “1987”.

b) NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH.—Section 202 of the Rehabilitation Act of 1973 (29 U.S.C. 762) is amended—

(1) in subsection (b)(8), by striking “the handicapped” and inserting “individuals with handicaps”;

(2) in subsection (c)(1)—

(A) by striking “his” each place it appears and inserting “the Director’s”;

(B) by striking “National Council on the Handicapped” where it appears in the third sentence and inserting “National Council on Disability”; and

(C) by striking “him” where it appears in the last sentence and inserting “the Director”;

(3) in subsection (c)(3), by inserting a comma after “to such provisions”;

(4) in the second sentence of subsection (g)—

(A) by striking “in the consultation” and inserting “in consultation”; and

(B) by striking “National Council on the Handicapped” and inserting “National Council on Disability”;

(5) in the third sentence of subsection (g), by inserting “the Director considers” before “necessary”;

(6) in subsection (i)(2), by striking “Office of Special Education and Rehabilitation Services” and inserting “Office of Special Education and Rehabilitative Services”;

(7) by amending subsection (j)(2) to read as follows:

(2) The Director shall establish, either directly or by way of grant contract, a Research and Training Center in the Pacific Basin in order to improve services to individuals with handicaps through relevant rehabilitation research and training in the Pacific Basin and to assist in the coordination of rehabilitation services provided to a broad range of agencies and entities. Such center shall—

“(A) develop a sound demographic base,

“(B) analyze, develop, and utilize appropriate technology,

“(C) develop a culturally relevant rehabilitation manpower development program, and

“(D) facilitate interagency communication and cooperation, implementing advanced information technology.”; and

(8) in subsection (l)—

(A) by striking “Committee on Handicapped Research” in the third sentence and inserting “Interagency Committee on Disability Research”;

(B) by inserting a comma after “Further” in the fourth sentence; and

(C) by striking “Interagency Committee on Handicapped Research” in the last sentence and inserting “Interagency Committee on Disability Research”.

c) INTERAGENCY COMMITTEE.—Section 203(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 761b(a)(1)) is amended by striking

Grants.
Contracts.

"Interagency Committee on Handicapped Research" and inserting "Interagency Committee on Disability Research".

(d) **RESEARCH.**—Section 204 of the Rehabilitation Act of 1973 (29 U.S.C. 762) is amended—

(1) in subsection (b)(1), by striking "centers" in the seventh sentence and inserting "Centers";

(2) in subsection (b)(2)(B), by striking "to" where it appears after "severe handicaps";

(3) in subsection (b)(2)(C), by striking "to" where it appears after "handicaps, and";

(4) in subsection (b)(3)(A), by striking "centers," and inserting "Centers,";

(5) in subsection (b)(4), by striking "Conduct a" and inserting "Conduct of a";

(6) in subsection (b)(5), by striking "rehabilitation of the individuals" and inserting "rehabilitation of individuals";

(7) in subsection (b)(8)—

(A) by striking "handicapped children" and inserting "children with handicaps"; and

(B) by striking "handicapped Indian Americans" and inserting "American Indians with handicaps";

(8) in subsection (b)(9), by striking "handicapped and" and inserting "individuals with handicaps, including";

(9) in subsection (b)(11), by striking "handicapped children" the first place it appears and inserting "children with handicaps"; and

(10) in subsection (b)(11)(A), by striking "severely handicapped children" both places it appears and inserting "children with severe handicaps".

SEC. 204. SUPPLEMENTARY SERVICES AND FACILITIES.

(a) **DECLARATION OF PURPOSE.**—Section 300(3) of the Rehabilitation Act of 1973 (29 U.S.C. 770(3)) is amended by striking "handicapped migratory agricultural workers or seasonal farmworkers" and inserting "migratory agricultural workers with handicaps or seasonal farmworkers with handicaps".

(b) **VOCATIONAL TRAINING SERVICES FOR INDIVIDUALS WITH HANDICAPS.**—Section 302(b)(3)(D) of the Rehabilitation Act of 1973 (29 U.S.C. 772(b)(3)(D)) is amended by striking "meet" and inserting "meets".

(c) **TRAINING.**—Section 304 of the Rehabilitation Act of 1973 (29 U.S.C. 774) is amended—

(1) in subsection (a)(3), by striking "program,," and inserting "programs,";

(2) in subsection (b)(1)—

(A) by striking "those individuals who meet the definition of severely handicapped" and inserting "individuals with severe handicaps"; and

(B) by striking "ill and";

(3) in subsection (b)(3)(A)—

(A) by striking "grant of contract" and inserting "grant or contract"; and

(B) by striking "from" and inserting "utilizing";

(4) in subsection (d)(1), by striking "the Office of Information and Resources for the Handicapped" and inserting "the Office of Information and Resources for Individuals With Disabilities";

(5) in subsection (d)(2)(D), by striking “the Education for All Handicapped Children Act” and inserting “the Education of the Handicapped Act”; and

(6) in subsection (f), by striking “1991.” and inserting “1991.”.

d) COMPREHENSIVE REHABILITATION CENTERS.—Section 305(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 775(a)(1)) is amended by striking “handicapped persons” and inserting “individuals with handicaps”.

e) GENERAL GRANT AND CONTRACT REQUIREMENTS.—Section 306 of the Rehabilitation Act of 1973 (29 U.S.C. 776) is amended—

(1) in subsection (b)(4), by striking “related to” and inserting “relating to”;

(2) in subsection (b)(5), by striking “with Davis-Bacon Act” and inserting “with the Davis-Bacon Act”; and

(3) in subsection (h), by inserting a comma after “When”.

f) AUTHORIZATION OF APPROPRIATIONS.—Section 310(a) of the Rehabilitation Act of 1973 (29 U.S.C. 777(a)) is amended by striking the penultimate and inserting “(other than sections 311(d), 311(e), and 311(f))”.

g) SPECIAL DEMONSTRATION PROGRAMS.—Section 311 of the Rehabilitation Act of 1973 (29 U.S.C. 777a) is amended—

(1) in the first sentence of subsection (c)(1), by striking “handicapped youths” and inserting “youths with handicaps”;

(2) in the first sentence of subsection (e)(1), by striking “severely handicapped youth” and inserting “youths with severe handicaps”;

(3) in subsection (e)(3)(B)(ii), by striking “families.” and inserting “families, will”;

(4) in subsection (e)(3)(B)(iv)—

(A) by striking “designed” the second place it appears and inserting “designated”; and

(B) by striking “handicapped individual” and inserting “individual with handicaps”; and

(5) in subsection (e)(4)(B), by striking “both severely and mildly handicapped youth” and inserting “both youths with severe handicaps and youths with mild handicaps”.

h) MIGRATORY WORKERS.—Section 312 of the Rehabilitation Act of 1973 (29 U.S.C. 777b) is amended by striking “handicapped)” in the first sentence and inserting “such family members are individuals with handicaps)”.

i) READER SERVICES FOR THE BLIND.—Section 314(a)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 777d(a)(2)) is amended by striking “need” and inserting “needs”.

j) SPECIAL RECREATIONAL PROGRAMS.—(1) Part B of title III of the Rehabilitation Act of 1973 (29 U.S.C. 777-777f) is amended by inserting before section 316 the following heading:

29 USC 777f.

“SPECIAL RECREATIONAL PROGRAMS”.

(2) Section 316(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 777f(a)(1)) is amended by striking “nonhandicapped peers” in the third sentence and inserting “peers without handicaps”.

k) REPEAL OF OBSOLETE PROVISION.—Part B of title III of the Rehabilitation Act of 1973 (29 U.S.C. 777-777f) is further amended by striking section 313 where it appears following section 316.

29 USC 777c
note.

SEC. 205. NATIONAL COUNCIL ON DISABILITY.

(a) **IN GENERAL.**—The title heading for title IV of the Rehabilitation Act of 1973 (29 U.S.C. 780–785) is amended to read as follows:

“TITLE IV—NATIONAL COUNCIL ON DISABILITY”.

(b) **ESTABLISHMENT OF NATIONAL COUNCIL ON DISABILITY.**—Section 400 of the Rehabilitation Act of 1973 (29 U.S.C. 780) is amended—

(1) by amending the section heading to read as follows:

“ESTABLISHMENT OF NATIONAL COUNCIL ON DISABILITY”;

(2) in subsection (a)(1)—

(A) by striking “National Council on the Handicapped” and inserting “National Council on Disability”; and

(B) by striking “the handicapped” each place it appears and inserting “individuals with handicaps”; and

(3) in subsection (a)(2), by striking “handicapped individuals” and inserting “individuals with handicaps”.

(c) **DUTIES OF NATIONAL COUNCIL.**—Section 401 of the Rehabilitation Act of 1973 (29 U.S.C. 781) is amended—

(1) in subsection (a), by striking “handicapped individuals” each place it appears and inserting “individuals with handicaps”;

(2) in subsection (a)(4), by striking “persons with disabilities” each place it appears and inserting “individuals with disabilities”;

(3) in subsection (a)(4)(B), by striking “assisted” and inserting “assist”;

(4) in subsection (a)(7)(A), by striking “the handicapped” and inserting “individuals with handicaps”;

(5) in subsection (a)(8), by inserting a comma after “recommendations”; and

(6) in subsection (b)(1), by striking “recommendation” and inserting “recommendations”.

(d) **COMPENSATION OF NATIONAL COUNCIL MEMBERS.**—Section 402(a) of the Rehabilitation Act of 1973 (29 U.S.C. 782(a)) is amended by striking “traveltime” and inserting “travel time”.

(e) **STAFF OF NATIONAL COUNCIL.**—Section 403(b)(2)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 783(b)(2)(B)) is amended to read as follows:

“(B) in the name of the Council, accept, employ, and dispense of, in furtherance of this Act, any money or property, real, personal, or mixed, tangible or nontangible, received by gift, devise, bequest, or otherwise; and”.

SEC. 206. MISCELLANEOUS.

(a) **EMPLOYMENT OF INDIVIDUALS WITH HANDICAPS.**—Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) is amended—

(1) by inserting after “Equal Employment Opportunity Commission” the first place it appears the following: “(hereafter in this section referred to as the ‘Commission’)”;

(2) by striking “Equal Employment Opportunity Commission” the second place and each succeeding place it appears and inserting “Commission”;

(3) in subsection (a)—

Gifts and
property.

(A) by striking "Secretaries of Labor and Education and Health and Human Services" in the first sentence and inserting "Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services";

(B) by striking "co-chairmen" in the second sentence and inserting "co-chairpersons"; and

(C) by striking "Employment of the Handicapped" in the second sentence and inserting "Employment of People With Disabilities";

(4) in subsection (a)(2), by striking "the Office" and inserting "the Commission";

(5) in subsection (b)—

(A) by striking "handicapped employees" in the second sentence and inserting "employees with handicaps"; and

(B) by striking "Office" each place it appears in the last sentence and inserting "Commission";

(6) in subsection (e), by striking "a individualized" and inserting "an individualized"; and

(7) in subsection (f), by striking "President's Committee on Employment of the Handicapped" each place it appears and inserting "President's Committee on Employment of People With Disabilities".

(b) ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.—Section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2)(A) The term of office of each appointed member of the Board shall be three years. Each year, the terms of office of four appointed members of the board shall expire.

"(B) A member whose term has expired may continue to serve until a successor has been appointed.

"(C) A member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed.";

(2) in subsection (a)(3), by striking "he" and inserting "the member";

(3) in subsection (a)(5)(A), by striking "traveltime" and inserting "travel time";

(4) in subsection (b)(2), by inserting a comma after "surface transportation";

(5) in subsection (b)(4), by striking "Administrator of the General Services Administration" and inserting "Administrator of General Services";

(6) in subsection (b)(5), by striking "results to" and inserting "results of";

(7) in subsection (b)(8), by striking "physically handicapped persons" and inserting "individuals with physical handicaps";

(8) in subsection (c)(2)(A), by inserting a comma after "new or expanded transportation systems";

(9) in subsection (d)(2)(B), by striking "which related to" and inserting "that relate to";

(10) in the last sentence of subsection (f)—

(A) by striking the comma after "daily pay rate";

(B) by striking "title 45" and inserting "title 5"; and

(C) by striking "traveltime" and inserting "travel time";

and

(11) in subsection (g)—

(A) by striking "transportation barriers to individuals with handicaps" in the fourth sentence and inserting "transportation barriers facing individuals with handicaps"; and

(B) in the seventh sentence—

(i) by striking "transportation barriers of handicapped individuals" and inserting "transportation barriers facing individuals with handicaps"; and

(ii) by striking "housing needs of handicapped individuals" and inserting "housing needs of individuals with handicaps".

(c) **EMPLOYMENT UNDER FEDERAL CONTRACTS.**—Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793) is amended—

(1) in subsection (a), by inserting a comma in the first sentence after "to carry out such contract";

(2) in subsection (b), by striking "refuses" in the first sentence and inserting "refused"; and

(3) in subsection (c), by striking "The President" each place it appears and inserting "the President".

(d) **NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS.**—Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) is amended—

(1) in the first sentence of subsection (a), by striking "his handicap" and inserting "her or his handicap"; and

(2) in subsection (b)(2)(B), by striking "section 198(a)(10)" and inserting "section 1471(12)".

(e) **SECRETARIAL RESPONSIBILITIES.**—Section 506 of the Rehabilitation Act of 1973 (29 U.S.C. 794b) is amended—

(1) by redesignating paragraphs (1) through (4) as subsections (a) through (d), respectively;

(2) by redesignating subparagraphs (A) and (B) of subsection (a) (as redesignated by paragraph (1)) as paragraphs (1) and (2), respectively;

(3) in subsection (b) (as redesignated by paragraph (1)), by striking "traveltime" and inserting "travel time"; and

(4) in subsection (c) (as redesignated by paragraph (1)), by inserting a comma after "the President" in the first sentence.

(f) **ELECTRONIC EQUIPMENT ACCESSABILITY.**—Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) is amended—

(1) in subsection (a)(1)—

(A) by inserting "the Director of" before "the National Institute";

(B) by striking "the General Services" and inserting "General Services"; and

(C) by striking "handicapped individuals" and inserting "individuals with handicaps";

(2) in subsection (a)(3), by inserting after "revised" the following: "by the Director of the National Institute on Disability and Rehabilitation Research and the Administrator of General Services in consultation with the electronics industry and the Interagency Committee for Computer Support of Handicapped Employees"; and

(3) in subsection (c), by striking "a handicapped individual" and inserting "an individual with handicaps".

207. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH HANDICAPS.

ADMINISTRATION.—Section 612(b) of the Rehabilitation Act of (29 U.S.C. 795a(b)) is amended by striking “programs authorized under” in the first sentence and all that follows through period at the end and inserting “the Job Training Partnership and the Community Services Block Grant Act.”.

PROJECTS WITH INDUSTRY.—Section 621 of the Rehabilitation Act of 1973 (29 U.S.C. 795g) is amended—

(1) in subsection (a)(1), by striking “people” and inserting “individuals”;

(2) in subsection (a)(2)(D), by striking “handicapped individuals” and inserting “individuals with handicaps”;

(3) in subsection (b)(1), by striking “assurances” and inserting “assurance”;

(4) in subsection (b)(3), by striking “assurances” and inserting “assurance”;

(5) in subsection (d)(1), by striking “section (a)(3)” and inserting “subsection (a)(4)”;

(6) in subsection (d)(2), by striking “section (a)(3)” and inserting “subsection (a)(4)”;

(7) in subsection (d)(4), by striking “National Council on the Handicapped” and inserting “National Council on Disability”.

BUSINESS OPPORTUNITIES FOR INDIVIDUALS WITH HANDICAPS.—Section 622 of the Rehabilitation Act of 1973 (29 U.S.C. 795h) is amended by striking “the Secretaries of Labor and Commerce” where it appears in the first sentence and inserting “the Secretary of Labor and the Secretary of Commerce”.

AUTHORIZATION OF APPROPRIATIONS.—Section 623 of the Rehabilitation Act of 1973 (29 U.S.C. 795i) is amended—

(1) by inserting a comma after “fiscal year 1991”; and

(2) by inserting a comma after “1990” the second place it appears.

ALLOTMENTS.—Section 633 of the Rehabilitation Act of 1973 (29 U.S.C. 795l) is amended—

(1) in subsection (a)(1), by inserting a comma after “\$250,000”;

(2) in subsection (a)(2)(A), by striking “the term ‘States’ does not” and inserting “the term ‘State’ does not”; and

(3) in subsection (c)(1)—

(A) by inserting a comma after “section 638” in the first sentence; and

(B) by striking “appropriation” in the second sentence and inserting “application”.

STATE PLAN.—Section 634 of the Rehabilitation Act of 1973 (29 U.S.C. 795m) is amended—

(1) in subsection (a)—

(A) by striking “In order” and inserting “(1) Except as provided in paragraph (2),”; and

(B) adding at the end the following new paragraph:

(2) This subsection shall not apply in any fiscal year ending on or after October 1, 1990, in which amounts appropriated for this part do not equal or exceed \$5,000,000.”;

(2) in subsection (b)(3)(C), by striking “subsection (b)(3)(D) of this part” and inserting “subparagraph (D) of this paragraph”; and

(3) in subsection (b)(3)(D), by striking "614(5)" and inserting "614(a)(5)".

(g) SERVICES; AVAILABILITY AND COMPARABILITY.—Section 635(a) of the Rehabilitation Act of 1973 (29 U.S.C. 795n) is amended—

- (1) by inserting "the" before "provision";
- (2) by inserting a comma before "consistent"; and
- (3) by inserting a comma after "subsection (b)".

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 638 of the Rehabilitation Act of 1973 (29 U.S.C. 795q) is amended by inserting "and" after "1990".

SEC. 208. COMPREHENSIVE SERVICES FOR INDEPENDENT LIVING.

(a) ELIGIBILITY.—Section 702(a) of the Rehabilitation Act of 1973 (29 U.S.C. 796a(a)) is amended—

(1) by inserting "that are" before "appreciably" the first place it appears; and

(2) by inserting "that are" before "of appreciably".

(b) ALLOTMENTS.—Section 703 of the Rehabilitation Act of 1973 (29 U.S.C. 796b) is amended by striking "subpart" each place it appears in subsections (a) and (b) and inserting "part".

(c) PAYMENTS TO STATES FROM ALLOTMENTS.—Section 704(b)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 796c(b)(2)) is amended by striking "subpart" and inserting "part".

(d) STATE PLANS.—Section 705(a)(4)(C) of the Rehabilitation Act of 1973 (29 U.S.C. 796d(a)(4)(C)) is amended—

(1) by inserting "will" after "that such program";

(2) by striking "section 112 of the Developmental Disabilities Services and Facilities Construction Act" and inserting "Developmental Disabilities Assistance and Bill of Rights Act" and

(3) by striking "the Education for All Handicapped Children Act of 1975" and inserting "the Education of the Handicapped Act".

(e) STATE INDEPENDENT LIVING COUNCILS.—Section 706 of the Rehabilitation Act of 1973 (29 U.S.C. 796d-1) is amended by striking "handicapped individuals" each place it appears and inserting "individuals with handicaps".

(f) GRANT PROGRAM ESTABLISHED.—Section 711 of the Rehabilitation Act of 1973 (29 U.S.C. 796e) is amended—

(1) in subsection (b)(3), by striking "handicapped individuals" and inserting "individuals with handicaps";

(2) in subsection (c)(2)(E), by inserting a comma after "recreation";

(3) in subsection (c)(2)(F), by inserting a comma after "recreational opportunities";

(4) in subsection (e)(4), by striking "National Council on Handicapped" and inserting "National Council on Disability";

(5) in subsection (f)(1), by striking "evaluation standards" and inserting "evaluation standards published under"; and

(6) in subsection (h), by striking "not served or underserved" and inserting "underserved or not served".

(g) SERVICE PROGRAM ESTABLISHED.—Section 721(a)(6) of the Rehabilitation Act of 1973 (29 U.S.C. 796f(a)(6)) is amended by striking "blind person" and inserting "blind individual".

(h) PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.—Section 731(a) of the Rehabilitation Act of 1973 (29 U.S.C. 796g(a)) is amended in the first sentence by inserting "for" after "advocate".

(i) **AUTHORIZATION OF APPROPRIATIONS.**—Section 741(d) of the Rehabilitation Act of 1973 (29 U.S.C. 796i(d)) is amended—

(1) in paragraph (1), by striking “and 1990” and inserting “1990, and 1991”; and

(2) in paragraph (2), by striking “moneys” and inserting “monies”.

SEC. 209. CLERICAL AMENDMENTS.

The table of contents contained in section 1 of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended—

(1) by striking the item relating to section 132 and inserting the following:

“Sec. 131. Study of needs of American Indians with handicaps.”;

(2) by striking the heading for the items relating to title II and inserting the following:

“TITLE II—RESEARCH AND TRAINING”;

(3) by striking the heading for the items relating to title IV and inserting the following:

“TITLE IV—NATIONAL COUNCIL ON DISABILITY”;

(4) by striking the item relating to section 400 and inserting the following:

“Sec. 400. Establishment of National Council on Disability.”; and

(5) by striking the heading for the items relating to part C of title VI and inserting the following:

“PART C—SUPPORTED EMPLOYMENT SERVICES FOR INDIVIDUALS WITH SEVERE HANDICAPS”.

SEC. 210. CONFORMING AMENDMENT.

Subsection (b) of section 704 of the Rehabilitation Act Amendments of 1986 (the second place such section appears), relating to supported employment services for individuals with severe handicaps, is repealed.

Employment
and
unemployment.
29 USC 795m
note.

TITLE III—AMENDMENTS RELATING TO THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES

SEC. 301. PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES.

(a) **NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH.**—The joint resolution entitled “Joint Resolution to establish the first week in October of each year as National Employ the Physically Handicapped Week”, approved August 11, 1945, is amended—

(1) by amending the first sentence to read as follows: “That hereafter the month of October in each year shall be designated as National Disability Employment Awareness Month.”; and

(2) in the second sentence—

(A) by striking “week” and inserting “month”; and

(B) by striking “handicapped workers” and inserting “workers with disabilities”.

36 USC 155.

63 Stat. 409.

(b) **PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES.**—The joint resolution entitled “Joint Resolution authorizing an appropriation for the work of the President’s Committee on National Employ the Physically Handicapped Week”, approved July 11, 1949, is amended—

(1) by striking “National Employ the Physically Handicapped Week” the first place it appears and inserting “National Disability Employment Awareness Month”;

(2) by striking “President’s Committee on National Employ the Physically Handicapped Week” each place it appears and inserting “President’s Committee on Employment of People With Disabilities”; and

(3) by adding at the end the following new section:

“**SEC. 2.** The President’s Committee on Employment of People With Disabilities may—

Voluntarism.

“(1) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code; and

Gifts and property.

“(2) in the name of the Committee, accept, employ, and dispose of, in furtherance of this resolution, any money or property, real, personal, or mixed, tangible or nontangible, received by gift, devise, bequest, or otherwise.”.

American
Printing House
for the Blind
Amendments of
1988.

TITLE IV—AMENDMENTS RELATING TO THE AMERICAN PRINTING HOUSE FOR THE BLIND

20 USC 101 note. **SEC. 401. SHORT TITLE.**

This title may be cited as the “American Printing House for the Blind Amendments of 1988”.

SEC. 402. TERMINATION OF PERPETUAL TRUST.

(a) **IN GENERAL.**—The perpetual trust fund and permanent annual appropriations thereof established by the Act of March 3, 1879, ch. 186, 20 Stat. 467, 468, as amended by the Act of June 25, 1906, ch. 3536, 34 Stat. 460 (codified in part in 20 U.S.C. 101) are terminated.

20 USC 101 note. (b) **EFFECTIVE DATE.**—This section shall take effect on October 1, 1989.

SEC. 403. PRESERVATION OF AUTHORIZATION OF APPROPRIATIONS.

The Act of August 4, 1919, ch. 31, 41 Stat. 272, as amended by section 4 of Public Law 87-294, 75 Stat. 627 (codified in part in 20 U.S.C. 101) is further amended by striking “in addition to the permanent appropriation of \$10,000 made in the Act entitled ‘An Act to promote the education of the blind’, approved March 3, 1879, as amended”.

20 USC 101 note. **SEC. 404. COMPENSATION.**

Any and all rights of the American Printing House for the Blind determined to have vested in the perpetual trust fund established by the Act of March 3, 1879, shall be deemed to be compensated by the appropriation to the American Printing House for the Blind for fiscal year 1990.

SEC. 405. REFERENCE.

20 USC 101 note.

Notwithstanding any Federal law, reference to the perpetual trust fund and permanent annual appropriations thereof established by the Act of March 3, 1879, shall not be given any effect.

TITLE V—AMENDMENTS TO THE HELEN KELLER NATIONAL CENTER ACT

SEC. 501. EXTENSION OF PROGRAM AUTHORIZATION.

Section 205 of the Helen Keller National Center Act (29 U.S.C. 1904) is amended by striking “1990” and inserting “1991”.

Approved November 7, 1988.

LEGISLATIVE HISTORY—H.R. 5334 (S. 2821):

CONGRESSIONAL RECORD, Vol. 134 (1988):
Sept. 26, considered and passed House.
Oct. 12, considered and passed Senate.

Public Law 100-631
100th Congress

Joint Resolution

Nov. 7, 1988
[H.J. Res. 573]

To designate the week beginning November 13, 1988, as "National Craniofacial Awareness Week".

Whereas as many as 200,000 children of less than 5 years of age suffer from severe craniofacial deformity;

Whereas individuals who suffer from craniofacial deformity, including children and adults, are too often forced to live secluded lives, hidden from society;

Whereas individuals who suffer from craniofacial deformity and their families experience severe emotional and behavioral difficulties;

Whereas the National Craniofacial Foundation, Let's Face It, and the National Foundation for Facial Reconstruction fund programs for research and education regarding craniofacial deformity and treatment of individuals who suffer from craniofacial deformity;

Whereas the National Craniofacial Foundation, Let's Face It, and the National Foundation for Facial Reconstruction have funded surgical and nonsurgical treatment for more than 10,000 patients from throughout the United States and 12 countries; and

Whereas the National Craniofacial Foundation, Let's Face It, and the National Foundation for Facial Reconstruction have begun to aggressively seek out individuals who can be aided by the services of the organizations: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning November 13, 1988, is designated as "National Craniofacial Awareness Week", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

Approved November 7, 1988.

LEGISLATIVE HISTORY—H.J. Res. 573:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 21, considered and passed House and Senate.

Public Law 100-632
100th Congress

Joint Resolution

Designating November 4 through 10, 1988, as the “Week of Remembrance of
Kristallnacht”.Nov. 7, 1988
[H.J. Res. 654]

Whereas November 9-10, 1988, marks the fiftieth anniversary of
Kristallnacht, The Night of Broken Glass;

Whereas Kristallnacht was sanctioned by the Nazi state to terrorize
the Jewish citizens of Germany and Austria;

Whereas during Kristallnacht, hundreds of synagogues in Germany
and Austria were burned and destroyed, businesses and homes
were ransacked, scores of innocent people were killed because
they were Jews, and thousands of such people were arrested and
sent to concentration camps;

Whereas the lack of any response from civilized nations led the
governments of Germany and Austria to believe that further
atrocities would go unpunished;

Whereas this belief brought about mass murders and carnage on a
scale never before seen in human history;

Whereas Kristallnacht was a watershed event in Nazi rule and
served as a prelude to the Second World War and the death of
millions of innocent people;

Whereas the reign of the Nazi government marks one of the darkest
periods in civilized history; and

Whereas Kristallnacht should remind us all that evil must be
confronted forcefully and the civilized world cannot watch idly
while barbarism and mass murder are committed against in-
nocent peoples: Now, therefore, be it

*Resolved by the Senate and House of Representatives of the
United States of America in Congress assembled, That November 4
through 10, 1988, is designated as the “Week of Remembrance of
Kristallnacht”, and the President is authorized and requested to
issue a proclamation calling upon the people of the United States to
observe such week with appropriate ceremonies and activities.*

Approved November 7, 1988.

LEGISLATIVE HISTORY—H.J. Res. 654:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 21, considered and passed House and Senate.

Public Law 100-633
100th Congress

An Act

Nov. 7, 1988

[S. 850]

To amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF RIO CHAMA RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraph at the end:

“() RIO CHAMA, NEW MEXICO.—The segment extending from El Vado Ranch launch site (immediately south of El Vado Dam) downstream approximately 24.6 miles to elevation 6,353 feet above mean sea level; to be administered by the Secretary of Agriculture and the Secretary of the Interior. For purposes of compliance with the planning requirements of subsection (d), the Cooperative Management Plan for the river prepared by the Secretary of Agriculture and the Secretary of the Interior may be revised and amended to the extent necessary to conform to the provisions of this Act. The segment of the Rio Chama beginning at the El Vado Ranch launch site downstream to the beginning of Forest Service Road 151 shall be administered as a wild river and the segment downstream from the beginning of Forest Service Road 151 to elevation 6,353 feet shall be administered as a scenic river.”.

SEC. 2. PROVISIONS APPLICABLE TO CERTAIN SEGMENT OF RIO CHAMA.

The protections afforded under the Wild and Scenic Rivers Act for rivers listed in section 5(a) for study for potential addition to the national wild and scenic rivers system shall, until Congress determines otherwise, apply to the segment of the Rio Chama from the point at elevation 6,353 feet above mean sea level to the point approximately 4.0 miles downstream at elevation 6,283.5 feet above mean sea level: *Provided*, That nothing in this Act or the Wild and Scenic Rivers Act shall interfere with the Secretary of the Army's operation and management of Abiquiu Dam for purposes authorized by section 5 of Public Law 97-140 or otherwise authorized prior to December 31, 1988.

SEC. 3. MANAGEMENT OF OTHER RIVER SEGMENT AND FOREST SERVICE LANDS.

(a) The Secretary of the Army, acting through the Chief of Engineers, the Secretary of the Interior, acting through the Bureau of Land Management, and the Secretary of Agriculture, acting through the Forest Service, shall jointly manage the segment of the Rio Chama River in New Mexico from elevation 6,283.5 feet above mean sea level downstream to elevation 6,235 feet above mean sea level. Such management shall be pursuant to—

(1) the Preferred Alternative for the proposed Santa Fe National Forest Plan (dated January 1986);

(2) the "Interim Rio Chama River Management Plan", dated May 1986 (as that plan may be revised in the "Final Rio Chama River Management Plan"); and

(3) shall be consistent with the operation of Abiquiu Dam for purposes authorized by section 5 of Public Law 97-140 or otherwise authorized prior to December 31, 1988.

(b) The Secretary of Agriculture shall not acquire, except by consent of owner, any interests in the Jolly-Chama Canyon Subdivision: *Provided*, That such subdivision lands are maintained in single unit private residential use.

Approved November 7, 1988.

LEGISLATIVE HISTORY—S. 850 (H.R. 1839):

HOUSE REPORTS: No. 100-394 accompanying H.R. 1839 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-568 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Oct. 27, H.R. 1839 considered and passed House.

Vol. 134 (1988): Oct. 7, S. 850 considered and passed Senate.

Oct. 19, considered and passed House, amended.

Oct. 20, Senate concurred in House amendment.

Joint Resolution

Nov. 7, 1988

[S.J. Res. 301]

Designating January 20, 1989, as "National Skiing Day".

Whereas commercial alpine and nordic skiing operations are among the fastest growing commercial uses of the national forests; Whereas skiing increases the recreational value of the national forests by providing a winter recreational use for such forests; Whereas skiing is a healthful activity that promotes physical well-being, contributes to the enrichment of the human spirit, and fosters an appreciation of the outdoor environment; Whereas skiing provides enjoyment to millions of people each winter; Whereas skiing improves employment opportunities in, and contributes to the economic stability of, a number of States; Whereas the people of many rural communities in the United States rely primarily on skiing for winter employment and income; and Whereas people throughout the world can become aware of the environmental grandeur and recreational resources of the United States by skiing in the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That January 20, 1989, be designated as "National Skiing Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such day with appropriate ceremonies and activities.

Approved November 7, 1988.

LEGISLATIVE HISTORY—S.J. Res. 301:

CONGRESSIONAL RECORD, Vol. 134 (1988):
Oct. 7, considered and passed Senate.
Oct. 21, considered and passed House.

Public Law 100-635
100th Congress

Joint Resolution

To designate the week of November 28 through December 5, 1988, as "National Book Week".

Nov. 7, 1988

[S.J. Res. 342]

Whereas an informed electorate is vital to a strong democracy; whereas books have been replaced by television as a primary source of information and entertainment;

Whereas books have provided the means whereby our history and knowledge have passed from one generation to the next;

Whereas a national effort to promote books and writers would complement efforts of literacy programs, encourage reading, and advance the literature of the United States;

Whereas the Department of Education estimates the adult illiteracy rate to be 13 percent (17,000,000 to 21,000,000 persons) among United States adults over 19 years of age;

Whereas illiteracy impairs the ability to learn, analyze, and communicate; and

Whereas this Nation must make a concerted effort to teach its citizens how to read and make them aware of the vast benefits of literacy: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of November 28 through December 5, 1988, is designated as "National Book Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe each week with appropriate ceremonies and activities.

Approved November 7, 1988.

LEGISLATIVE HISTORY—S.J. Res. 342:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-636
100th Congress

An Act

Nov. 8, 1988

[H.R. 4211]

To reauthorize the National Ocean Pollution Planning Act of 1978 for fiscal years 1989 and 1990, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701-1709) is amended as follows:

(1) Paragraph (1) of section 3 (33 U.S.C. 1702(1)) is amended to read as follows:

“(1) The term “Administration” means the National Oceanic and Atmospheric Administration of the United States Department of Commerce.”.

(2) Paragraph (2) of section 3 (33 U.S.C. 1702(2)) is repealed.

(3) Paragraphs (3), (4), (5), (6), (7), and (8) of section 3 (33 U.S.C. 1702 (3), (4), (5), (6), (7), and (8)) are redesignated as paragraphs (2), (3), (4), (5), (6), and (7), respectively.

(4) Section 3 is amended by inserting after paragraph (7) (as redesignated) the following:

“(8) The term “Under Secretary” means the Under Secretary for Oceans and Atmosphere, United States Department of Commerce.”.

(5) The term “Administrator” is struck each place it appears and the term “Under Secretary” is inserted in lieu thereof.

(6) Subparagraph (B) of section 3A(a)(2) (33 U.S.C. 1702a(a)(2)(B)) is amended to read as follows:

“(B) be headed by a director who shall—

“(i) be appointed by the Under Secretary, and

“(ii) be the official responsible for the administration of the program;”.

(7) Subparagraph (B) of section 3A(b)(2) (33 U.S.C. 1702a(b)(2)(B)) is amended to read as follows:

“(B) review all department and agency budget requests transmitted to it under section 4 of this Act and submit a report simultaneously to the Office of Management and Budget and to the Congress concerning those budget requests;”.

(8) Section 10 (33 U.S.C. 1709) is amended—

(A) by striking “and” immediately following “1986”; and

(B) by striking “1987.” and inserting in lieu thereof “1987, not to exceed \$3,750,000 for fiscal year 1989, and not to exceed \$4,000,000 for fiscal year 1990.”.

Approved November 8, 1988.

LEGISLATIVE HISTORY—H.R. 4211:

HOUSE REPORTS: No. 100-657, Pt. 1 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 3, 4, considered and passed House.

Oct. 19, considered and passed Senate.

Reports.

Public Law 100-637
100th Congress

An Act

To provide for the leasing of certain real property to the American National Red Cross, District of Columbia Chapter, for the construction and maintenance of certain buildings and improvements.

Nov. 8, 1988

[S. 2496]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the joint resolution entitled "Joint Resolution to grant authority for the erection of a permanent building for the American National Red Cross, District of Columbia Chapter, Washington, District of Columbia", approved July 1, 1947 is amended by adding at the end thereof the following new section:

"SEC. 11. (a) Notwithstanding any other provision of law, the Administrator of the General Services Administration shall enter into a lease of the real property described in the first section of this Act with the American National Red Cross, District of Columbia Chapter. Such lease shall provide that such property shall be used as an office, medical and scientific facility by such Red Cross Chapter and the tenants of such Chapter on such terms and conditions as shall be customary and necessary, including that—

36 USC 13 note.

"(1) the lease shall be triple net to the United States and such Red Cross Chapter shall pay all taxes, insurance, and operating costs, and a rent of \$1.00 for the term of the lease;

"(2) the lease term shall be for 99 years, and all improvements on such property shall revert to the ownership of the United States at the conclusion of the term;

"(3) such Red Cross Chapter may (at the expense of such Chapter) demolish the improvements on such property or any improvements constructed on such property after the date of enactment of this section, build, own, operate, and maintain new improvements, enter into leases, finance improvements (and mortgage any improvements and the leasehold estate), and in all manner deal with the property subject only to the condition that the ownership interest of the United States in the land shall not be adversely affected;

"(4) any space not needed for the operations of such Red Cross Chapter or the American National Red Cross in any building or improvement constructed on such property shall be first made available for use by Federal agencies at rental rates and other related expenses that are less than fair market value and reflect the value of the property provided to such Red Cross Chapter under the provisions of this Act;

"(5) the United States shall cooperate with such Red Cross Chapter with respect to any zoning or other matters relating to the development or improvement of such property; and

"(6) the plans of any proposed building or improvement for construction after the date of the enactment of this section shall first be approved by the American National Red Cross, the

Commission of Fine Arts, and the National Capital Planning Commission.

“(b) The enactment of this section may not be construed as establishing a policy of the United States Government to furnish building sites for Red Cross chapters or any eleemosynary institution at any other place.”.

New York.

SEC. 2. The General Services Administration is authorized to lease, on a long-term basis as determined by the Administrator of General Services, approximately 200,000 square feet of office space located in the area north of 96th Street in the county of New York, New York, at a lease rate not to exceed comparable rates for equivalent space in such area or comparable rates within the building to be occupied, subject to the approval of the Committee on Public Works and Transportation.

Approved November 8, 1988.

LEGISLATIVE HISTORY—S. 2496:

HOUSE REPORTS: No. 100-1008 (Comm. on Public Works and Transportation).

SENATE REPORTS: No. 100-432 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Aug. 2, considered and passed Senate.

Oct. 4, considered and passed House, amended.

Oct. 19, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):

Nov. 8, Presidential statement.

Public Law 100-638
100th Congress

An Act

to declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes.

Nov. 8, 1988

[S. 2752]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF QUINAULT INDIAN RESERVATION.

The Quinault Indian Reservation is hereby expanded to include those lands consisting of more or less eleven thousand nine hundred and five acres and generally depicted on the map entitled, "North boundary expansion, Quinault Indian Nation", numbered 88-S2752- and dated, September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation. The boundary of the Olympic National Forest is hereby modified as depicted on the map referred to in this section.

Public
information.

SEC. 2. QUINAULT SPECIAL MANAGEMENT AREA.

The Secretary of Agriculture shall—

(a) manage those Federal lands within the boundaries of the Olympic National Forest consisting of more or less five thousand four hundred and sixty acres and generally depicted on the map entitled "Quinault Special Management Area" numbered 88-S2752-2 and dated, September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation in a manner consistent with section 3; and

Public
information.

(b) shall distribute the proceeds from the sale of forest products on lands referred to in subsection (a) as provided in section 4.

Forests and
forest products.

SEC. 3. ADMINISTRATION OF LANDS.

(a) All right, title, and interest in lands owned by the United States and administered by the United States Forest Service and referred to in section 1, shall hereafter—

(1) be administered by the Secretary of the Interior; and

(2) be held in trust by the United States for the Quinault Indian Nation and to be part of the Quinault Indian Reservation.

(b) All right, title, and interest in lands which are owned by the United States and administered by the United States Forest Service which are referred to in section 2 shall remain in the United States and, except as provided in section 4, shall continue to be administered by the United States Forest Service accordance with all laws, rules and regulations applicable to the national forests.

(c) The rights of the Quinault Indian Nation to revenues under subsection (b) of section 4 shall not affect the management of these lands nor create a trust or fiduciary duty on the Secretary of Agriculture with respect to such management beyond that which the Secretary may have under existing law.

SEC. 4. RECEIPTS FROM NATIONAL FOREST SYSTEM LANDS.

(a) Notwithstanding any other provision of law, the Secretary of Agriculture shall, without further appropriations, receive from the gross proceeds from the sale of forest products from lands referred to in section 2 a reasonable fee not to exceed 10 per centum for preparation and administration of timber sales from such lands.

(b) Notwithstanding the requirements of the Act of March 4, 1907 (16 U.S.C. 499), concerning moneys received from revenues generated from the national forests into the Treasury of the United States, moneys received from the lands referred to in section 2 shall be distributed in the following manner:

(1) 45 per centum of all moneys received during any fiscal year from said land shall be paid into the account referred to in section 8; and

Washington.

(2) 45 per centum of all moneys received during any fiscal year from said lands shall be paid to the State of Washington pursuant to the Act of May 23, 1908 (C. 192, 35 Stat. 251 as amended; 16 U.S.C. 500).

SEC. 5. LIMITATIONS ON TIMBER HARVEST.

(a) The Secretary of the Interior shall not approve any sale of unprocessed timber from lands referred to in section 1 which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser: *Provided*, That this limitation shall not apply to specific quantities of grades and species of timber which the Secretary determines are surplus to domestic lumber and plywood manufacturing needs.

(b) In addition to restrictions referred to in subsection (a), the Secretary of the Interior shall—

(1) limit the sale of timber from the lands referred to in section 1 to a quantity equal to or less than a quantity which can be removed from such lands annually in perpetuity on a long term sustained-yield basis: *Provided*, That in order to meet overall multiple-use objectives, the Secretary may establish an allowable quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quantity established pursuant to this section so long as the average sale quantity of timber over the decade covered does not exceed such quantity limitation; and

(2) administer all timber and forest products sold from the lands referred to in section 1 in accordance with the conditions of the Policy Statement for the Grays Harbor sustained yield unit as defined and administered by the Secretary of Agriculture as long as such policy statement remains in effect.

National Forest
System.

SEC. 6. EXISTING RIGHTS-OF-WAY AND OTHER INTERESTS.

The Secretary of Agriculture shall reserve permanent easements for the purpose of continuing access, including public access, to

National Forest Systems lands on Forest Service roads numbered 21, 2110, 2120, 2130, 2140, 2190, 2191, and all numbered extensions or segments thereof. Such easements shall be in a form acceptable to the Secretary of Agriculture, including provisions for cooperative maintenance.

SEC. 7. ACCESS TO LANDS.

National Forest
System.

(a) The Secretary of the Interior shall allow such additional rights-of-way through lands referred to in section 1 as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation, considers necessary to provide access to and management of National Forest System lands, including public access. Such rights-of-way shall be located in such manner as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, determines to be appropriate.

(b) The Secretary of Agriculture shall allow such rights-of-way through National Forest System lands as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, considers necessary to provide access to lands referred to in section 1. Such rights-of-way shall be located in such a manner as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation, determines to be appropriate.

SEC. 8. USE OF TIMBER SALE PROCEEDS.

The Secretary of the Interior shall maintain a segregated account and shall deposit in such account all funds derived from the sale of processed timber from the lands referred to in section 1. The Secretary shall make such funds available only for—

(a) costs incurred by the Quinault Indian Nation for the preparation and administration of timber sales, including road construction and maintenance on such lands;

(b) the mitigation of any adverse environmental impacts from timber harvest activities on such lands;

Environmental
protection.

(c) reforestation of any lands referred to in section 1 or any other lands within the external boundaries of the Quinault Indian Reservation: *Provided*, That nothing herein shall allow the Secretary of the Interior to substitute these funds for other appropriated funds or for forest management deductions, funds presently available for reforestation; or

(d) for the purchase from willing sellers by the Quinault Indian Nation of any lands or interests in lands within the external boundaries of the Quinault Indian Reservation and any costs incurred by the Quinault Indian Nation incident thereto.

SEC. 9. SAVINGS PROVISIONS.

Nothing in this Act is intended to affect or modify—

(a) the proportional distribution shares of the respective counties of receipts from the sale of timber in the remaining lands of the Olympic National Forest;

(b) any property rights which may exist within the exterior boundaries of the Quinault Indian Reservation as it existed prior to enactment of this Act; and

(c) any valid existing rights-of-way, leases or permits of the Secretary of Agriculture or any person or entity in any of the lands referred to in section 1.

Approved November 8, 1988.

LEGISLATIVE HISTORY—S. 2752 (H.R. 5203):

HOUSE REPORTS: No. 100-1033, Pt. 1 accompanying H.R. 5203 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-582 (Select Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 3, 4, H.R. 5203 considered and failed House.

Oct. 7, S. 2752 considered and passed Senate.

Oct. 19, considered and passed House.

Public Law 100-639
100th Congress

An Act

To request the President to award a gold medal on behalf of Congress to Andrew Wyeth, and to provide for the production of bronze duplicates of such medal for sale to the public.

Nov. 9, 1988

[H.R. 593]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

31 USC 5111
note.

The Congress finds that—

(1) Andrew Wyeth has created artwork which is undeniably American and internationally admired;

(2) Andrew Wyeth has received world-wide acclaim for his works including "Christina's World", "The Trodden Weed", and "Wind from the Sea";

(3) Andrew Wyeth has distinguished himself through his preeminence in the egg tempera technique;

(4) Andrew Wyeth was chosen by President Kennedy in 1963 as the first artist to receive the Presidential Freedom Award, the country's highest civilian award;

(5) Andrew Wyeth has received numerous international awards for his works; and

(6) Andrew Wyeth has made outstanding and invaluable contributions to American art and culture.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

31 USC 5111
note.

(a) **PRESENTATION AUTHORIZED.**—The President is authorized to present, on behalf of the Congress, to Andrew Wyeth a gold medal of appropriate design, in recognition of his outstanding and invaluable contributions to American art and culture.

(b) **DESIGN AND STRIKING.**—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury shall strike a gold medal with suitable emblems, devices, and inscriptions to be determined by the Secretary.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—Effective October 1, 1987, there are authorized to be appropriated not to exceed \$20,000 to carry out this section.

SEC. 3. DUPLICATE MEDALS.

31 USC 5111
note.

(a) **STRIKING AND SALE.**—The Secretary of the Treasury may strike and sell duplicates in bronze of the gold medal struck pursuant to section 2 under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

(b) **REIMBURSEMENT OF APPROPRIATIONS.**—The appropriation used to carry out section 2 shall be reimbursed out of the proceeds of sales under subsection (a).

31 USC 5111
note.

SEC. 4. NATIONAL MEDALS.

The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

Approved November 9, 1988.

LEGISLATIVE HISTORY—H.R. 593:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Aug. 8, considered and passed House.

Oct. 21, considered and passed Senate.



Public Law 100-640
100th Congress

An Act

To amend the Foreign Sovereign Immunities Act with respect to admiralty jurisdiction.

Nov. 9, 1988

[H.R. 1149]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Maritime
affairs.

SECTION 1. ADMIRALTY SUITS AGAINST FOREIGN STATES.

Section 1605(b) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking all that follows the first semicolon and inserting the following: “and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and”;

(2) in paragraph (2) by striking “subsection (b)(1) of this section” and inserting “paragraph (1) of this subsection”; and

(3) by striking all that follows paragraph (2) and inserting the following:

“(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

“(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in the Ship Mortgage Act, 1920 (46 U.S.C. 911 and following). Such action shall be brought, heard, and determined in accordance with the provisions of that Act and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.”.

SEC. 2. ATTACHMENT OR EXECUTION.

Section 1610 of title 28, United States Code, is amended by adding at the end the following:

“(e) The vessels of a foreign State shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).”.

8 USC 1605
note.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to actions commenced on or after the date of the enactment of this Act.

Approved November 9, 1988.

LEGISLATIVE HISTORY—H.R. 1149:

HOUSE REPORTS: No. 100-823 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Aug. 8, considered and passed House.
Oct. 21, considered and passed Senate.

Public Law 100-641
100th Congress

An Act

To designate the Federal building located at 324 West Market Street in Greensboro, North Carolina, as the "L. Richardson Preyer, Jr. Federal Building and United States Courthouse and Post Office".

Nov. 9, 1988

[H.R. 3327]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BUILDING.

The Federal Building located at 324 West Market Street in Greensboro, North Carolina, shall be known and designated as the "L. Richardson Preyer, Jr. Federal Building and United States Courthouse and Post Office".

SEC. 2. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the building referred to in section 1 shall be deemed to be a reference to the "L. Richardson Preyer, Jr. Federal Building and United States Courthouse and Post Office".

SEC. 3. HANDICAPPED PARKING SYSTEM.

23 USC 402
note.

(a) REGULATIONS.—Not later than the 180th day following the date of the enactment of this Act, the Secretary of Transportation shall issue regulations—

(1) which establish a uniform system for handicapped parking designed to enhance the safety of handicapped individuals, and

(2) which encourage adoption of such system by all the States.

In issuing such regulations, the Secretary shall consult the States.

(b) DEFINITIONS.—For purposes of this section—

(1) UNIFORM SYSTEM FOR HANDICAPPED PARKING.—A uniform system for handicapped parking designed to enhance the safety of handicapped individuals is a system which—

(A) adopts the International Symbol of Access (as adopted by Rehabilitation International in 1969 at its 11th World Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps which limit or impair the ability to walk;

(B) provides for the issuance of license plates displaying the International Symbol of Access for vehicles which will be used to transport individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

(C) provides for the issuance of removable windshield placards (displaying the International Symbol of Access) to individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State;

(D) provides that fees charged for the licensing or registration of a vehicle used to transport individuals with

handicaps do not exceed fees charged for the licensing or registration of other similar vehicles operated in the State; and

(E) for purposes of easy access parking, recognizes licenses and placards displaying the International Symbol of Access which have been issued by other States and countries.

(2) STATE.—The term “State” has the meaning such term has when used in chapter 4 of title 23, United States Code.

Approved November 9, 1988.

LEGISLATIVE HISTORY—H.R. 3327:

HOUSE REPORTS: No. 100-480 (Comm. on Public Works and Transportation).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Dec. 18, considered and passed House.

Vol. 134 (1988): Oct. 20, considered and passed Senate, amended. House concurred in Senate amendment.

Public Law 100-642
 101st Congress

An Act

to amend the Act of June 6, 1900, to increase the number of trustees of the Frederick Douglass Memorial and Historical Association.

Nov. 9, 1988

[H.R. 4236]

As it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BOARD OF TRUSTEES OF THE FREDERICK DOUGLASS MEMORIAL AND HISTORICAL ASSOCIATION.

NUMBER.—Section 4 of the Act of June 6, 1900 (ch. 806; 31 Stat. 1001), is amended by striking out “not less than five members nor more than nine” and inserting in lieu thereof “not less than 9 members nor more than 19 members”.

EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect upon the election of additional members of the board of trustees of the Frederick Douglass Memorial and Historical Association (pursuant to the amendment made by subsection (a)) at a regular or special meeting of the board called for the purpose of holding an election.

Approved November 9, 1988.

LEGISLATIVE HISTORY—H.R. 4236:

HOUSE REPORTS: No. 100-1091 (Comm. on the District of Columbia).
 CONGRESSIONAL RECORD, Vol. 134 (1988):
 Oct. 19, considered and passed House.
 Oct. 20, considered and passed Senate.

Joint Resolution

Nov. 9, 1988
[H.J. Res. 137]

Designating the month of May, 1989, as "National Asparagus Month".

Whereas the genus asparagus, a member of the lily family, originated along the shores of the Mediterranean Sea and on its many islands;

Whereas asparagus was considered a culinary delicacy and used for medicinal purposes by the ancient Greeks and Romans;

Whereas asparagus has been grown in America since the 1600's for its nutritional and decorative value in floral arrangements;

Whereas two hundred and twenty-three million pounds of asparagus was grown in the United States comprising a total value of approximately \$137,000,000 in 1986; and

Whereas the delectable vegetable is low in calories and fat, and contains large amounts of calcium and phosphorus as well as vitamins A, C, and B, all important components of a well balanced diet: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of May, 1989, is designated as "National Asparagus Month". The President is requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate ceremonies and activities.

Approved November 9, 1988.

LEGISLATIVE HISTORY—H.J. Res. 137:

CONGRESSIONAL RECORD, Vol. 134 (1988):

May 5, considered and passed House.

Oct. 21, considered and passed Senate, amended. House concurred in Senate amendments.

Public Law 100-644
100th Congress

Joint Resolution

designating February 5 through 11, 1989, as "National Burn Awareness Week".

Nov. 9, 1988
[H.J. Res. 604]

Whereas the burn injury problem of the United States is worse than that of any other industrialized nation;

Whereas burn injuries are one of the leading causes of accidental death in the United States;

Whereas every year approximately 2,000,000 individuals are victims of burn injuries in the United States;

Whereas 70,000 of these burn injury victims are hospitalized, accounting for 9,000,000 disability days annually;

Whereas approximately 12,000 individuals die from burn injuries annually;

Whereas the rehabilitative and psychological impact of burns are devastating;

Whereas children, the elderly, and the disabled are those groups most likely to suffer serious burns;

Whereas it is estimated that 75 percent of all burns could be prevented by proper education of children and adults and by appropriate use of design and technology;

Whereas the injuries and loss of life caused by burns could be reduced by increasing the general public's awareness of the need for smoke detectors and home fire escape plans and by educating the general public about the risk of burns associated with certain items in the home environment; and

Whereas there is a need for an effective national program that deals with all aspects of burn injuries: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That February 5 through 11, 1989, is designated as "National Burn Awareness Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe each week with appropriate programs and activities.

Approved November 9, 1988.

LEGISLATIVE HISTORY—H.J. Res. 604:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 21, considered and passed House and Senate.

Public Law 100-645
100th Congress

Joint Resolution

Nov. 9, 1988

[H.J. Res. 626]

Designating September 13, 1989, as "Uncle Sam Day".

Whereas Samuel Wilson of the City of Troy, New York, is accepted as the progenitor of our national symbol, Uncle Sam;

Whereas Uncle Sam, the embodiment of Samuel Wilson, represents the enterprising, idealistic, and strong spirit that is the backbone of our Nation;

Whereas the symbol of Uncle Sam remains important to the identity of our Nation among freedom-loving people of the world;

Whereas the people of the City of Troy have dedicated themselves to the remembrance of Samuel Wilson and his role in American history;

Whereas the City of Troy marks its 200th anniversary in 1989; and
Whereas September 13 is the birth date of Samuel Wilson: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That September 13, 1989, is designated as "Uncle Sam Day" in honor of Samuel Wilson of the City of Troy, New York on the occasion of the 200th anniversary of the City. The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that day with appropriate ceremonies and activities.

Approved November 9, 1988.

LEGISLATIVE HISTORY—H.J. Res. 626:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 21, considered and passed House and Senate.

Public Law 100-646
100th Congress

Joint Resolution

Changing the date for the counting of the Electoral vote by Congress to January 4, 1989.

Nov. 9, 1988
[H.J. Res. 677]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in carrying out the procedure set forth in section 15 of title, 3, United States Code, for 1989, “the fourth day of January” shall be substituted for “the sixth day of January” in the first sentence of such section.

3 USC 15 note.

Approved November 9, 1988.

LEGISLATIVE HISTORY—H.J. Res. 677:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 20, considered and passed House and Senate.

Public Law 100-647
100th Congress

An Act

Nov. 10, 1988
[H.R. 4333]

To make technical corrections relating to the Tax Reform Act of 1986, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Technical and
Miscellaneous
Revenue Act of
1988.
26 USC 1 note.

SECTION 1. SHORT TITLE; ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Technical and Miscellaneous Revenue Act of 1988”.

(b) **DEFINITIONS.**—For purposes of this Act—

(1) **1986 CODE.**—The term “1986 Code” means the Internal Revenue Code of 1986.

(2) **REFORM ACT.**—Except where incompatible with the intent, the term “Reform Act” means the Tax Reform Act of 1986.

(c) **CLERICAL AMENDMENT.**—Paragraph (29) of section 7701(a) of the 1986 Code is amended by striking out “of 1954” and inserting in lieu thereof “of 1986”.

(d) **TABLE OF CONTENTS.**—

TITLE I—TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

- Sec. 1001. Amendments related to title I of the Reform Act.
- Sec. 1002. Amendments related to title II of the Reform Act.
- Sec. 1003. Amendments related to title III of the Reform Act.
- Sec. 1004. Amendments related to title IV of the Reform Act.
- Sec. 1005. Amendments related to title V of the Reform Act.
- Sec. 1006. Amendments related to title VI of the Reform Act.
- Sec. 1007. Amendments related to title VII of the Reform Act.
- Sec. 1008. Amendments related to title VIII of the Reform Act.
- Sec. 1009. Amendments related to title IX of the Reform Act.
- Sec. 1010. Amendments related to title X of the Reform Act.
- Sec. 1011. Amendments related to parts I and II of subtitle A of title XI of the Reform Act.
- Sec. 1011A. Amendments related to parts III and IV of subtitle A of title XI of the Reform Act.
- Sec. 1011B. Amendments related to subtitles B and C of title XI of the Reform Act.
- Sec. 1012. Amendments related to title XII of the Reform Act.
- Sec. 1013. Amendments related to title XIII of the Reform Act.
- Sec. 1014. Amendments related to title XIV of the Reform Act.
- Sec. 1015. Amendments related to title XV of the Reform Act.
- Sec. 1016. Amendments related to title XVI of the Reform Act.
- Sec. 1017. Amendments related to title XVII of the Reform Act.
- Sec. 1018. Amendments related to title XVIII of the Reform Act.
- Sec. 1019. Effective date.

TITLE II—AMENDMENTS RELATED TO TAX PROVISIONS IN OTHER LEGISLATION

- Sec. 2001. Amendments related to Superfund Revenue Act of 1986.
- Sec. 2002. Amendments related to Harbor Maintenance Revenue Act of 1986.
- Sec. 2003. Amendments related to Omnibus Budget Reconciliation Act of 1986.
- Sec. 2004. Amendments related to the Revenue Act of 1987.
- Sec. 2005. Amendments related to Pension Protection Act and full funding limitations.
- Sec. 2006. Amendments related to section 9201 of the Omnibus Budget Reconciliation Act of 1987.

**TITLE III—ADDITIONAL SIMPLIFICATION AND CLARIFICATION
PROVISIONS****Subtitle A—Diesel Fuel Excise Tax Collection and Exemption Procedures**

- Sec. 3001. Tax-free purchases of certain fuels.
- Sec. 3002. Expedited refund for certain fuels used in nontaxable uses.
- Sec. 3003. Marine retailers treated as producers.

Subtitle B—Health Care Continuation Rules

- Sec. 3011. Failure to satisfy continuation requirements of group health plans.

Subtitle C—Employee Benefit Nondiscrimination Rules

- Sec. 3021. Modifications to discrimination rules applicable to certain employee benefit plans.

Subtitle D—Estate and Gift Taxes

- Sec. 3031. Estate tax valuation freezes.

Subtitle E—Indian Fishing Rights

- Sec. 3041. Federal tax treatment of income derived by Indians from exercise of fishing rights secured by treaty, etc.
- Sec. 3042. State tax treatment of income derived by Indians from exercise of fishing rights secured by treaty, etc.
- Sec. 3043. Conforming amendments relating to old-age, survivors, and disability insurance program.
- Sec. 3044. Effective date; no inference created.

**TITLE IV—EXTENSIONS AND MODIFICATIONS OF EXPIRING TAX
PROVISIONS**

- Sec. 4001. Extension and modification of exclusion for employer-provided education assistance.
- Sec. 4002. Extension and modification of exclusion of amounts received under group legal services plans.
- Sec. 4003. Carryover of post-1987 low-income housing credit dollar amounts permitted.
- Sec. 4004. Simplification of rule where partnership holds qualified low-income building.
- Sec. 4005. Provisions relating to mortgage revenue bonds and mortgage credit certificates.
- Sec. 4006. Extension of certain business energy credits.
- Sec. 4007. Extension of credit for increasing research activities.
- Sec. 4008. Denial of deduction for 50 percent of amounts allowed as a research credit.
- Sec. 4009. Allocation of research and experimental expenditures.
- Sec. 4010. Extension and modification of targeted jobs credit.
- Sec. 4011. Treatment of publicly offered regulated investment companies under 2-percent floor.
- Sec. 4012. Extension and modifications of provisions relating to financial institutions.

TITLE V—REVENUE INCREASE PROVISIONS**Subtitle A—Corporate Estimated Tax Provisions**

- Sec. 5001. Corporate estimated tax payments.

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- Sec. 5011. Limitation on unreasonable mortality and other expense charges under section 7702.
- Sec. 5012. Treatment of modified endowment contracts.
- Sec. 5013. Valuation of group-term life insurance.
- Sec. 5014. Study.

Subtitle C—Loss Transfer Rules for Alaska Native Corporations

- Sec. 5021. Repeal of rules permitting loss transfers by Alaska Native Corporations.

Subtitle D—Estate and Gift Tax Provisions

- Sec. 5031. Valuation tables.
- Sec. 5032. Rate schedule for tax on estates of nonresidents not citizens.

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Subtitle E—Long-Term Contract Provisions

Sec. 5041. Long-term contract provisions.

Subtitle F—Tax-Exempt Bond Provisions

Sec. 5051. Treatment of certain pooled financing bonds.

Sec. 5052. Treasury regulations relating to student loan bonds.

Sec. 5053. Restrictions on bonds used to provide residential rental property for family units.

Subtitle G—Excise Tax Provisions

Sec. 5061. Imposition of excise tax on manufacture or importation of pipe tobacco.

Sec. 5062. Modification of distilled spirits tax credit for flavors content.

Subtitle H—Other Revenue Increase Provisions

Sec. 5071. Increase in penalty for bad checks.

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Sec. 5074. Partnership reporting of unrelated business taxable income.

Sec. 5075. Options subject to wash sale rules.

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Sec. 6002. Nonrecognition of gain where one spouse dies before occupying new residence.

Sec. 6003. Meals on certain vessels and offshore oil platforms exempt from 80 percent limitation on deduction for meals.

Sec. 6004. Treatment of certain innocent spouses.

Sec. 6005. Interim treatment of certain amounts awarded to Christa McAuliffe Fellows.

Sec. 6006. Election to claim certain unearned income of child on parent's return.

Sec. 6007. Jury duty pay remitted to an individual's employer allowed as a deduction in computing gross income.

Sec. 6008. Business use of automobiles by rural mail carriers.

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Sec. 6027. Treatment of single purpose agricultural or horticultural structures.

Sec. 6028. Treatment of property used in the farming business.

Sec. 6029. Treatment of certain trees.

Sec. 6030. One-year deferral of proceeds from live-stock sold on account of drought.

Sec. 6031. Certain repledges permitted.

Sec. 6032. Treatment of indirect holdings through trusts under section 448 of the 1986 Code.

Sec. 6033. Disaster assistance act payments included in special rule for taxable year of inclusion.

Subtitle C—Pensions and Employee Benefits

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Sec. 6052. Modifications of discrimination rules applicable to certain annuity contracts.

Sec. 6053. Required distribution beginning date for governmental and church plans.

Sec. 6054. Section 415 limitation for State and local plans.

Sec. 6055. Minimum participation standards.

Sec. 6056. Study of effect of minimum participation rule on employers required to provide certain retirement benefits.

Sec. 6057. Prohibition on collectibles not to include State coins.

Sec. 6058. Application of fundings rules to multiple employer plans.

Sec. 6059. Application of section 415 limitations to police and firefighters.

- 6060. Excise tax on disposition of stock by an ESOP not to apply to certain forced dispositions.
- 6061. Loans to acquire employer securities.
- 6062. Effective date of section 415 limitations of collectively bargained agreements.
- 6063. Treatment of pre-1989 elections for dependent care assistance under cafeteria plans.
- 6064. Modifications to section 457.
- 6065. Exception for governmental plans.
- 6066. Air transportation of cargo and of passengers treated as same service for purposes of fringe benefits inclusion.
- 6067. Special rule for applying spin-off rules to bridge banks.
- 6068. Income averaging allowed to lump-sum distributions of alternate payees.
- 6069. Increase in employer reversion tax.
- 6070. Definition of part-time employee for purposes of section 89.
- 6071. Rural telephone cooperatives permitted to have qualified cash or deferred arrangements.
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- 6078. Church self-funded death benefit plans treated as life insurance.
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Subtitle E—Excise Tax Provisions

- 6101. Authority to prescribe tolerances for the volume of wine in bottles for purposes of the excise tax on wine.
- 6102. Wholesale distributors to administer claims for refund of gasoline tax.
- 6103. Authority to exempt articles from excise tax on heavy trucks and trailers where benefit accrues to United States.
- 6104. Application of reduced gasoline tax rate to blenders.
- 6105. Certain educational institutions exempt from user fees on permits for industrial use of specially denatured distilled spirits.
- 6106. Small procedures exempt from occupational tax on distilled spirits plants.
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- 6127. Election to be treated as qualified electing fund to be made by taxpayer.
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- 6134. Treatment of certain gambling winnings received by nonresident aliens.
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- 6151. Treatment of certain rents under section 2032A.
- 6152. Clarification of treatment of joint and survivor annuities under Qtip rules.

Subtitle H—Tax-Exempt Bond Provisions

- 6176. Clarification of small issue bond definition of manufacturing facility.
- 6177. Rules applicable to tax and revenue anticipation bonds.
- 6178. Amendment to mortgage bond purchase price regulations.

- Sec. 6179. Application of security interest test to bond financing of hazardous waste clean-up activities.
- Sec. 6180. Tax-exempt financing for certain rail facilities.
- Sec. 6181. Rules relating to rebate on earnings on bona fide debt service fund.
- Sec. 6182. Bonds issued by volunteer fire departments.
- Sec. 6183. Disregard of pooled financings in determination of qualification for small issuer exception.

Subtitle I—Provisions Relating to Exempt Organizations

- Sec. 6201. Certain games of chance not treated as unrelated trade or business.
- Sec. 6202. Purchase of insurance by cooperative hospital service organizations.
- Sec. 6203. Cancellation of certain debts originated by or guaranteed by the United States not taken into account in determining tax exempt status of certain organizations.
- Sec. 6204. Determination of operating foundation status for certain purposes.

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- Sec. 6228. Procedures involving taxpayer interviews.
- Sec. 6229. Taxpayers may rely on written advice of Internal Revenue Service.
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- Sec. 6243. Jurisdiction to restrain certain premature assessments.
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- 001. Amendments relating to definition of “compensation”.
- 002. Contribution adjustments.
- 003. Administrative expenses.
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- 005. Annual report.
- 006. Amendments relating to railroad unemployment repayment tax.
- 007. GAO study of fraud and payment errors.
- 008. One-year extension of time limit for filing report by Commission on Railroad Retirement Reform.

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- 301. Additional lump sum payment in certain cases.
- 302. Deletion of last person service as a disqualification.
- 303. Earnings of disability annuitants.
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- 001. Interim disability benefits in cases of delayed final decisions.
- 002. Application of earnings test in year of individual's death.
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- 005. Modifications in the term of office of public members of the board of trustees of the social security trust funds.
- 006. Continuation of disability benefits during appeal.
- 007. Exemption from social security for employers and employees who are both members of certain religious faiths.
- 008. Blood donor locator service.
- 009. Requirement of social security account number as a condition for receipt of social security benefits.
- 010. Substitution of certificate of election for application to establish entitlement for certain reduced widow's and widower's benefits.
- 011. Calculation of the windfall benefit guarantee amount based on pension amounts payable in the first month of concurrent entitlement rather than concurrent eligibility.
- 012. Consolidation of reports on continuing disability reviews.
- 013. Exclusion of employees separated from employment before January 1, 1989, from rule including as wages taxable under FICA certain payments for group-term life insurance.
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- 015. Amendments to rules governing social security coverage of Federal employment.
- 016. Technical corrections in OASDI provisions.
- 017. Certain cash wages paid to seasonal agricultural laborers excluded from OASDI coverage.
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- Sec. 8101. Extension of prohibition against implementation of certain proposed regulations.
- Sec. 8102. Review of policy governing use of AFDC funds to meet emergency needs of families eligible for AFDC through emergency assistance or special needs payments; report to Congress.
- Sec. 8103. Disregard of certain housing assistance payments in determining income and resources under SSI program.
- Sec. 8104. Foster care independent living initiatives.
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- Sec. 8201. Delay in reporting date for National Commission on Children.

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- Sec. 8402. Maintenance of bad debt collection policy.
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TITLE I—TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

Corporations.
Securities.

1001. AMENDMENTS RELATED TO TITLE I OF THE REFORM ACT.

AMENDMENTS RELATED TO SECTION 101 OF THE REFORM ACT.—

(1) Paragraph (2) of section 6867(b) of the 1986 Code is amended by striking out “at a 50-percent rate” and inserting in lieu thereof “at the highest rate of tax specified in section 1”.

(2)(A) Section 531 of the 1986 Code is amended to read as follows:

531. IMPOSITION OF ACCUMULATED EARNINGS TAX.

In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax equal to 28 percent of the accumulated taxable income.”

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1987. Such amendment shall not be treated as a change in a rate of tax for purposes of section 15 of the 1986 Code.

(3) The last sentence of section 1(g)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: “and subparagraph (B) shall be applied as if a deduction for a personal exemption were allowable under section 151 to such individual for such individual’s spouse.”

AMENDMENTS RELATED TO SECTION 102 OF THE REFORM ACT.—

(1) Paragraph (5) of section 63(c) of the 1986 Code is amended—

(A) by striking out “the standard deduction applicable” and inserting in lieu thereof “the basic standard deduction applicable”, and

(B) by striking out “STANDARD DEDUCTION” in the paragraph heading and inserting in lieu thereof “BASIC STANDARD DEDUCTION”.

(2) Subclause (I) of section 6012(a)(1)(C)(i) of the 1986 Code is amended to read as follows:

“(I) income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or”.

(3)(A) Subparagraph (A) of section 62(a)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence: “The fact that the reimbursement may be provided by a third party shall not be determinative of whether or not the preceding sentence applies.”

(B) Paragraph (2) of section 527(e) of the 1986 Code (defining exempt function) is amended by adding at the end thereof the following new sentence: “Such term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under section 162(a).”

26 USC 531 note.

(c) AMENDMENT RELATED TO SECTION 111 OF THE REFORM ACT.—Paragraph (3) of section 32(i) of the 1986 Code is amended to read as follows:

“(3) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10).”

Fellowships and
scholarships.
Schools and
colleges.

(d) AMENDMENTS RELATED TO SECTION 123 OF THE REFORM ACT.—(1)(A) Clause (ii) of section 4941(d)(2)(G) of the 1986 Code is amended to read as follows:

“(ii) scholarships and fellowship grants which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii).”

(B) Paragraph (1) of section 4945(g) of the 1986 Code is amended to read as follows:

“(1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).”

Aliens.

(2)(A) The second sentence of section 1441(b) of the 1986 Code is amended to read as follows: “The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act and which are—

“(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

“(2) in the case of an individual who is not a candidate for a degree at an educational organization described in 170(b)(1)(A)(ii), granted by—

“(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

“(B) a foreign government,

“(C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

“(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States.”

(B) Subsection (c) of section 871 of the 1986 Code is amended—

(i) by striking out “section 1441(b)(1) or (2)” and inserting in lieu thereof “the second sentence of section 1441(b)”; and

(ii) by striking out “(F) or (J)” each place it appears and inserting in lieu thereof “(F), (J), or (M)”.

(C) The following provisions of the 1986 Code are each amended by striking out “(F) or (J)” each place it appears and inserting in lieu thereof “(F), (J), or (M)”:

- (i) Section 3121(b)(19).
- (ii) Section 3231(e)(1).
- (iii) Section 3306(c)(19).

(D) Clause (i)(I) of section 7701(b)(5)(D) of the 1986 Code is amended by striking out “subparagraph (F)” and inserting in lieu thereof “subparagraph (F) or (M)”.

(E) Section 210(a)(19) of the Social Security Act is amended by striking out “(F) or (J)” each place it appears and inserting in lieu thereof “(F), (J), or (M)”. 42 USC 410.

(e) AMENDMENT RELATED TO SECTION 131 OF THE REFORM ACT.—Subsection (f) of section 86 of the 1986 Code is amended by inserting “and” at the end of paragraph (3), by striking out paragraph (4), and by redesignating paragraph (5) as paragraph (4).

(f) AMENDMENTS RELATED TO SECTION 132 OF THE REFORM ACT.—

(1) Section 67 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(f) COORDINATION WITH OTHER LIMITATION.—This section shall be applied before the application of the dollar limitation of the last sentence of section 162(a) (relating to trade or business expenses).”

(2) Paragraph (4) of section 67(b) of the 1986 Code is amended—

(A) by striking out “deduction” and inserting in lieu thereof “deductions”, and

(B) by inserting before the comma at the end thereof “and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose)”.

(3) Subsection (e) of section 67 of the 1986 Code is amended to read as follows:

“(e) DETERMINATION OF ADJUSTED GROSS INCOME IN CASE OF ESTATES AND TRUSTS.—For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

“(1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and

“(2) the deductions allowable under sections 642(b), 651, and 661,

shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section.”

(4) Subsection (c) of section 67 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following: “The preceding sentence shall not apply—

“(1) with respect to cooperatives and real estate investment trusts, and

“(2) except as provided in regulations, with respect to estates and trusts.”

(g) AMENDMENTS RELATED TO SECTION 142 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 274(n)(2) of the 1986 Code is amended to read as follows:

“(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).”

(2) Paragraph (2) of section 274(k) of the 1986 Code is amended to read as follows:

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

“(A) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e), and

“(B) any other expense to the extent provided in regulations.”

(3) Clause (ii) of section 274(m)(1)(B) of the 1986 Code is amended to read as follows:

“(ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).”

(4)(A) Paragraph (2) of section 274(n) of the 1986 Code is amended—

(i) by striking “or” at the end of subparagraph (C),

(ii) by striking the period at the end of subparagraph (D) and inserting “, or”, and

(iii) by adding at the end thereof the following:

“(E) in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82.

In the case of the employee, the exception of subparagraph (A) shall not apply to expenses described in subparagraph (E).”

(B) The following provisions of the 1986 Code are each amended by striking out “section 217” and inserting in lieu thereof “section 217 (determined without regard to section 274(n))”:

(i) Section 3121(a)(11).

(ii) Section 3306(b)(9).

(iii) Section 3401(a)(15).

42 USC 409.

(C) Section 209(k) of the Social Security Act is amended by striking out “section 217 of the Internal Revenue Code of 1954” and inserting in lieu thereof “section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code)”.

(5) Paragraphs (1) and (2) of section 274(h) of the 1986 Code are each amended by striking out “trade or business that” and inserting in lieu thereof “trade or business and that”.

Housing.

(h) AMENDMENTS RELATED TO SECTION 143 OF THE REFORM ACT.—

(1) Paragraph (5) of section 280A(c) of the 1986 Code amended by adding at the end thereof the following new sentence: “Any amount taken into account for any taxable year under the preceding sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year.”

(2) Clause (ii) of section 280A(c)(5)(B) of the 1986 Code is amended by striking out “trade or business” and inserting in lieu thereof “trade or business (or rental activity)”.

(3) Section 183(e)(2) of the 1986 Code is amended by striking out “2” and inserting in lieu thereof “3 (or 2 if applicable)”.

SEC. 1002. AMENDMENTS RELATED TO TITLE II OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 201 OF THE REFORM ACT.—

(1) Subsection (d) of section 1250 of the 1986 Code is amended by striking out paragraph (11).

(2) Subparagraph (B) of section 201(d)(14) of the Reform Act is amended by striking out “section 168(c)(2)(F)” and inserting in lieu thereof “within the meaning of section 168(c)(2)(F)”.

26 USC 7701.

(3) Paragraph (4) of section 312(k) of the 1986 Code is amended by striking out "paragraphs (1) and (3)" and inserting in lieu thereof "paragraph (1)".

(4) Paragraph (4) of section 46(e) of the 1986 Code is amended—

(A) by striking out "168(j)(6)" in subparagraph (B) and inserting in lieu thereof "168(i)(3)",

(B) by striking out "paragraphs (8) and (9) of section 168(j)" in subparagraph (D) and inserting in lieu thereof "paragraphs (5) and (6) of section 168(h)",

(C) by striking out "168(j)" in subparagraph (E) and inserting in lieu thereof "168(h)", and

(D) by striking out "168(j)(4)" in subparagraph (E) and inserting in lieu thereof "168(h)(2)".

(5) Clause (i) of section 168(d)(3)(A) of the 1986 Code is amended by striking out "and which are".

(6)(A) Subparagraph (B) of section 168(f)(5) of the 1986 Code is amended—

(i) by striking out "1st full taxable year" in clause (ii) and inserting in lieu thereof "1st taxable year", and

(ii) by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor."

(B) Paragraph (5) of section 168(f) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE.—In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986."

(7)(A) Subparagraph (A) of section 168(i)(7) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect."

(B) Subparagraph (B) of section 168(i)(7) of the 1986 Code is amended to read as follows:

"(B) TRANSACTIONS COVERED.—The transactions described in this subparagraph are—

"(i) any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731, and

"(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B)."

(C) Subparagraph (D) of section 168(i)(7) of the 1986 Code is hereby repealed.

(8) Subparagraph (B) of section 168(h)(2) of the 1986 Code is amended to read as follows:

“(B) EXCEPTION FOR CERTAIN PROPERTY SUBJECT TO UNITED STATES TAX AND USED BY FOREIGN PERSON OR ENTITY.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

“(i) subject to tax under this chapter, or

“(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived. For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.”

(9) Subsection (a) of section 178 of the 1986 Code is amended by striking out “the deduction allowable to a lessee of a lease for any taxable year for amortization under section 167, 169, 179, 185, 190, 193, or 194” and inserting in lieu thereof “the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization”.

(10) Subparagraph (A) of section 280F(d)(3) of the 1986 Code is amended by striking out “any recovery deduction” and inserting in lieu thereof “any depreciation deduction”.

(11)(A) Paragraph (2) of section 168(b) of the 1986 Code is amended to read as follows:

“(2) 150 PERCENT DECLINING BALANCE METHOD IN CERTAIN CASES.—Paragraph (1) shall be applied by substituting ‘150 percent’ for ‘200 percent’ in the case of—

“(A) any 15-year or 20-year property, or

“(B) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply.”

(B) Paragraph (5) of section 168(b) of the 1986 Code is amended by striking out “under paragraph (3)(C)” and inserting in lieu thereof “under paragraph (2)(B) or (3)(C)”.

(C) Subsection (c) of section 168 of the 1986 Code is amended to read as follows:

“(c) APPLICABLE RECOVERY PERIOD.—For purposes of this section—

“(1) IN GENERAL.—Except as provided in paragraph (2), the applicable recovery period shall be determined in accordance with the following table:

“In the case of:	The applicable recovery period is:
3-year property.....	3 years
5-year property.....	5 years
7-year property.....	7 years
10-year property.....	10 years
15-year property.....	15 years
20-year property.....	20 years
Residential rental property.....	27.5 years
Nonresidential real property.....	31.5 years.

“(2) PROPERTY FOR WHICH 150 PERCENT METHOD ELECTED.—In the case of property to which an election under subsection (b)(2)(B) applies, the applicable recovery period shall be determined under the table contained in subsection (g)(2)(C).”

12) Clause (i) of section 56(a)(1)(C) of the 1986 Code is amended by striking out "do not apply" and inserting in lieu thereof "do not apply by reason of section 203, 204, or 251(d) of the Act".

13) The heading of paragraph (24) of section 381(c) of the 1986 Code is amended by striking out "RECOVERY ALLOWANCE FOR RECOVERY PROPERTY" and inserting in lieu thereof "DEPRECIATION DEDUCTION".

14) Paragraph (5) of section 48(a) of the 1986 Code is amended—

(A) by striking out "168(j)(4)(C)" and inserting in lieu thereof "168(h)(2)(C)",

(B) by striking out "168(j)(4)(A)(iii)" and inserting in lieu thereof "168(h)(2)(A)(iii)",

(C) by striking out "168(j)(4)(B)" and inserting in lieu thereof "168(h)(2)(B)",

(D) by striking out "168(j)(6)" and inserting in lieu thereof "168(i)(3)",

(E) by striking out "168(j)(3)(C)(ii)" and inserting in lieu thereof "168(h)(1)(C)(ii)",

(F) by striking out "paragraphs (8) and (9) of section 168(j)" and inserting in lieu thereof "paragraphs (5) and (6) of section 168(h)", and

(G) by striking out subparagraph (E) and inserting in lieu thereof the following:

"(E) CROSS REFERENCE.—

"For provision providing special rules for the application of this paragraph and paragraph (4), see section 168(h)."

15) The last sentence of section 46(e)(3) of the 1986 Code is amended—

(A) by striking out "recovery property (within the meaning of section 168)" and inserting in lieu thereof "property to which section 168 applies",

(B) by striking out "present class life" and inserting in lieu thereof "class life", and

(C) by striking out "168(g)(2)" and inserting in lieu thereof "168(i)(1)".

16)(A) Subsection (s) of section 48 of the 1986 Code is amended adding at the end thereof the following new paragraph:

(9) TERMINATION.—This subsection shall not apply to any property placed in service after December 31, 1985, unless such property is transition property (as defined in section 49(e)(1))."

(B) Paragraph (4) of section 168(f) of the 1986 Code is amended read as follows:

(4) SOUND RECORDINGS.—Any works which result from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied."

17) Paragraph (7) of section 46(c) of the 1986 Code is amended—

(A) by striking out "recovery property" and inserting in lieu thereof "property to which section 168 applies",

(B) by striking out "168(c)" each place it appears and inserting in lieu thereof "168(e)",

(C) by striking out “168(f)(3)(B)” and inserting in lieu thereof “168(f)(3)(B) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)”, and

(D) by striking out “RECOVERY PROPERTY” in the paragraph heading and inserting in lieu thereof “PROPERTY TO WHICH SECTION 168 APPLIES”.

(18) Paragraph (1) of section 47(d) of the 1986 Code is amended by striking out “section 48(c)(8)(C)” and inserting in lieu thereof “section 46(c)(8)(C)”.

(19) Paragraph (1) of section 179(d) of the 1986 Code is amended by striking out “recovery property” and inserting in lieu thereof “tangible property (to which section 168 applies)”.

(20) Section 48 of the 1986 Code is amended by redesignating the subsection (s) relating to cross references as subsection (t).

(21) Clause (v) of section 168(e)(3)(B) of the 1986 Code is amended by striking out “any property” and inserting in lieu thereof “any section 1245 property”.

(22) The last sentence of section 167(l)(3)(G) of the 1986 Code is amended by striking out “section 168(e)(3)(C)” and inserting in lieu thereof “section 168(i)(9)(B)”.

(23)(A) Subparagraph (B) of section 168(d)(3) of the 1986 Code is amended to read as follows:

“(B) CERTAIN PROPERTY NOT TAKEN INTO ACCOUNT.—For the purposes of subparagraph (A), there shall not be taken into account—

“(i) any nonresidential real property and residential rental property, and

“(ii) any other property placed in service and disposed of during the same taxable year.”

26 USC 168 note.

(B) Clause (ii) of section 168(d)(3)(B) of the 1986 Code (as added by subparagraph (A)) shall apply to taxable years beginning after March 31, 1988, unless the taxpayer elects, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have such clause apply to taxable years beginning on or before such date.

(24) Subsection (a) of section 167 of the 1986 Code is amended by striking out the last sentence.

(25) Subparagraph (B) of section 46(d)(1) of the 1986 Code is amended—

(A) by striking out “recovery property (within the meaning of section 168)” in clause (i) and inserting in lieu thereof “property to which section 168 applies”, and

(B) by striking out “which is not recovery property (within the meaning of section 168)” in clause (ii) and inserting in lieu thereof “to which section 168 does not apply”.

(26)(A) Subparagraph (E) of section 47(a)(5) of the 1986 Code is amended by adding at the end thereof the following new clause:

“(v) TREATMENT AS RECOVERY PROPERTY.—Any reference in this paragraph to recovery property shall be treated as including a reference to any property to which section 168 (as amended by the Tax Reform Act of 1986) applies.”

(B) Subparagraph (D) of section 47(a)(5) of the 1986 Code is amended by striking out the last sentence.

(C) Clause (iii) of section 47(a)(5)(E) of the 1986 Code is amended by striking out "section 168(c)" and inserting in lieu thereof "section 168(e)".

(27) Subparagraph (A) of section 47(a)(9) of the 1986 Code is amended by striking out "section 168(j)(4)(C)" and inserting in lieu thereof "section 168(h)(2)".

(28) Clause (i) of section 47(d)(3)(C) of the 1986 Code is amended—

(A) by striking out "present class life (as defined in section 168(g)(2))" and inserting in lieu thereof "class life (as defined in section 168(i)(1))", and

(B) by striking out "no present class life" and inserting in lieu thereof "no class life".

(29) Paragraph (1) of section 48(a) of the 1986 Code is amended striking out "recovery property (within the meaning of section 168)" in the material following subparagraph (G) and inserting in lieu thereof "property to which section 168 applies".

(30) Subparagraph (C) of section 48(l)(2) of the 1986 Code is amended by striking out "which is recovery property (within the meaning of section 168)" and inserting in lieu thereof "to which section 168 applies".

(31) Subsection (d) of section 167 of the 1986 Code is amended striking out "recovery property defined in section 168" and inserting in lieu thereof "property to which section 168 applies".

AMENDMENTS RELATED TO SECTION 202 OF THE REFORM ACT.—

(1) Paragraph (3) of section 179(b) of the 1986 Code is amended read as follows:

"(3) LIMITATION BASED ON INCOME FROM TRADE OR BUSINESS.—

"(A) IN GENERAL.—The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

"(B) CARRYOVER OF DISALLOWED DEDUCTION.—The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

"(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

"(ii) the excess (if any) of—

"(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

"(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

"(C) COMPUTATION OF TAXABLE INCOME.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section."

(2) Paragraph (1) of section 280F(d) of the 1986 Code is amended by striking out "subsections (a) and (b)" and inserting in lieu thereof "subsections (a) and (b), and the limitation of paragraph (3) of this subsection,".

Real property.
26 USC 168 note.

(c) AMENDMENTS RELATED TO SECTION 203 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 203(a)(1) of the Reform Act is amended by adding at the end thereof the following new sentence: “No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 would not apply by reason of section 168(f)(5) of such Code if such property were placed in service after December 31, 1986.”

(2) Subsection (d) of section 203 of the Reform Act is amended—

(A) by striking out “the case of any taxable year” and inserting in lieu thereof “the case of any taxable year beginning before October 1, 1987”, and

(B) by adding at the end thereof the following new sentence: “The preceding sentence shall only apply to property which would be taken into account if such amendments did apply.”

26 USC 168 note.

(3) Notwithstanding section 203 of the Reform Act, the amendments made by section 201 of the Reform Act shall apply to any real property which was acquired before January 1, 1987, and was converted on or after such date from personal use to a use for which depreciation is allowable.

(4) Paragraph (1) of section 203(b) of the Reform Act is amended by adding at the end thereof the following new sentence:

“For purposes of this paragraph, all members of the same affiliated group of corporations (within the meaning of section 1504 of the Internal Revenue Code of 1986) filing a consolidated return shall be treated as one taxpayer.”

(5) Paragraph (1) of section 203(c) of the Reform Act is amended by striking out “Subparagraph” and inserting in lieu thereof “Except as otherwise provided in this subsection or section 204, subparagraph”.

(6) Clause (i) of section 203(b)(2)(C) of the Reform Act is amended by striking out “shall be the class life” and inserting in lieu thereof “applies shall be the class life”.

(7) Paragraph (3) of section 203(b) of the Reform Act is amended—

(A) by inserting before the comma at the end of subparagraph (A) “(or would have met such requirements if placed in service by such person)”, and

(B) by inserting “, or is leased to such person,” before “not later than”.

(8) Paragraph (2) of section 203(a) of the Reform Act is amended to read as follows:

“(2) SECTION 202.—

“(A) IN GENERAL.—The amendments made by section 202 shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

“(B) SPECIAL RULE FOR FISCAL YEARS INCLUDING JANUARY 1, 1987.—In the case of any taxable year (other than a calendar year) which includes January 1, 1987, for purposes of applying the amendments made by section 202 to property placed in service during such taxable year and after December 31, 1986—

“(i) the limitation of section 179(b)(1) of the Internal Revenue Code of 1986 (as amended by section 202) shall

be reduced by the aggregate deduction under section 179 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for section 179 property placed in service during such taxable year and before January 1, 1987,

“(ii) the limitation of section 179(b)(2) of such Code (as so amended) shall be applied by taking into account the cost of all section 179 property placed in service during such taxable year, and

“(iii) the limitation of section 179(b)(3) of such Code shall be applied by taking into account the taxable income for the entire taxable year reduced by the amount of any deduction under section 179 of such Code for property placed in service during such taxable year and before January 1, 1987.”

AMENDMENTS RELATED TO SECTION 204 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 204(a)(1) of the Reform Act is amended by striking out “and” at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof “, and”, and by inserting after clause (iii) the following new clause:

26 USC 168 note.

“(iv) described in subparagraph (F) or (H).”

(2) Subparagraph (C) of section 204(a)(1) of the Reform Act is amended by striking out the last sentence and inserting in lieu thereof the following:

“For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting ‘January 1, 1994’ for ‘January 1, 1991’ each place it appears.”

(3) Subparagraph (E) of section 204(a)(1) of the Reform Act is amended by striking out the last sentence and inserting in lieu thereof the following: “For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting ‘January 1, 1998’ for ‘January 1, 1991’ each place it appears.”

(4) Subparagraph (F) of section 204(a)(1) of the Reform Act is amended—

(A) by striking out “paragraph” and inserting in lieu thereof “subparagraph”,

(B) by striking out “, or” at the end of clause (iii) and inserting in lieu thereof a period, and

(C) by striking out so much of clause (iv) as precedes subclause (I) thereof and inserting in lieu thereof the following:

“A project is also described in this subparagraph if it is a mixed-use development which is—”

(5) The last sentence of section 204(a)(1)(F) of the Reform Act is amended—

(A) by striking out “subsection (b)(2)” and inserting in lieu thereof “section 203(b)(2)”, and

(B) by striking out “1993” and inserting in lieu thereof “1998”.

(6) Subparagraph (H) of section 204(a)(1) of the Reform Act is amended by striking out “July 1, 1986” and inserting in lieu thereof “June 30, 1986”.

(7)(A) Paragraph (4) of section 204(a) of the Reform Act is amended to read as follows:

“(4) PROPERTY TREATED UNDER PRIOR TAX ACTS.—The amendments made by section 201 shall not apply—

“(A) to property described in section 12(c)(2) (as amended by the Technical and Miscellaneous Revenue Act of 1988), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984,

“(B) to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984, and

“(C) to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.”

26 USC 168 note.

(B) Paragraph (2) of section 12(c) of the Tax Reform Act of 1984 is amended by striking out “which is placed in service before January 1, 1988”.

26 USC 168 note.

(8) Subparagraph (K) of section 204(a)(5) of the Reform Act is amended—

(A) by striking out “either” in the matter preceding clause (i),

(B) by striking out “super calendar” in clause (i) and inserting in lieu thereof “supercalendered”,

(C) by striking out “were incurred” in clause (i) and inserting in lieu thereof “was incurred”, and

(D) by inserting “the project” before “involves” in clause (v).

(9) Paragraph (5) of section 204(a) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

“(Z) A project is described in this subparagraph if—

Communications
and tele-
communications.
Minnesota.
Wisconsin.

“(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

“(ii) before January 1, 1986, at least \$15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network.”

(10)(A) Paragraph (8) of section 204(a) of the Reform Act is amended by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma, and by adding at the end thereof the following new subparagraphs:

Tennessee.

“(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

Massachusetts.

“(E) such facility is to serve Haverhill, Massachusetts.”

(B) Paragraph (8) of section 204(a) of the Reform Act is amended by striking out “, and section 203(c).”.

(11) Paragraph (10) of section 204(a) of the Reform Act is amended—

(A) by striking out “either” in the material preceding subparagraph (A),

South Carolina.

(B) by striking out “wastewater treatment facility” in subparagraph (C) and inserting in lieu thereof “wastewater treatment facility serving Greenville, South Carolina”, and

(C) by striking out “the letter of intent and service agreement described in subparagraph (A)(2) of this paragraph” in subparagraph (D) and inserting in lieu thereof “such letter of intent and service agreement”.

(12) Paragraph (11) of section 204(a) of the Reform Act is amended—

(A) by striking out “Kansas, Florida, Georgia, or Texas” in subparagraph (A) and inserting in lieu thereof “the United States”,

(B) by striking out “the purchase” in subparagraph (C) and inserting in lieu thereof “the purchaser”, and

(C) by striking out the last sentence.

(13) Paragraph (14) of section 204(a) of the Reform Act is amended by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a comma, and by inserting after subparagraph (E) the following:

26 USC 168 note.

“(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

Energy.
Massachusetts.
Utilities.

“(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

Oklahoma.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting ‘January 1, 1991’ for ‘January 1, 1989’.”

(14) Paragraph (15) of section 204(a) of the Reform Act is amended—

(A) by adding “located in New Mexico” after “to a project”,

New Mexico.

(B) by striking out “\$72,000” and inserting in lieu thereof “\$72,000,000”, and

(C) by striking out the last sentence and inserting in lieu thereof the following:

“For purposes of this paragraph, section 203(b)(2) shall be applied by substituting ‘January 1, 1996’ for ‘January 1, 1991’ each place it appears.”

(15) Paragraph (24) of section 204(a) of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

“(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately \$7,200,000.

“(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than \$28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986.”

(16) Paragraph (25) of section 204(a) of the Reform Act is amended by striking out “wood energy products” and inserting in lieu thereof “wood energy projects”.

(17) Paragraph (27) of section 204(a) of the Reform Act is amended—

(A) in subparagraph (B), by striking out “525,000” and inserting in lieu thereof “540,000”,

(B) in subparagraph (C)—

(i) by striking out "\$32,000,000" and inserting in lieu thereof "\$22,000,000", and

(ii) by striking out "before" and inserting in lieu thereof "on",

(C) in subparagraph (D), by striking out "and Avenue", and

(D) in subparagraph (H), by striking out "\$62,000" and inserting in lieu thereof "\$62,600,000".

26 USC 168 note.

(18) Paragraph (27) of section 204(a) of the Reform Act amended by adding at the end thereof the following:

"(I) A 600,000 square foot mixed use building known as the Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for the applicable date which would otherwise apply."

(19) Paragraph (31) of section 204(a) of the Reform Act amended by striking out "\$10,200,000" and inserting in lieu thereof "\$10,500,000".

(20) Paragraph (32) of section 204(a) of the Reform Act amended—

(A) in subparagraph (A)—

(i) by striking out "July 30, 1984" and inserting in lieu thereof "December 26, 1985",

(ii) by striking out "February 28, 1985" and inserting in lieu thereof "July 2, 1986", and

(iii) by striking out "on June 17, 1985" and inserting in lieu thereof "in May 1985",

(B) in subparagraph (B)—

(i) by striking out "August 30, 1984" and inserting in lieu thereof "December 26, 1985",

(ii) by striking out "May 4, 1985" and inserting in lieu thereof "July 2, 1986", and

(iii) by striking out "on July 3, 1985" and inserting in lieu thereof "in July 1985",

(C) in subparagraph (E)—

(i) by striking out "\$2,200,000" and inserting in lieu thereof "\$5,000,000",

(ii) by striking out "on January 27, 1986" and inserting "in 1986", and

(iii) by inserting "in Masontown, Pennsylvania" after "plant",

Pennsylvania.

(D) by amending subparagraph (K) to read as follows:

Energy.
Nevada.

"(K) A 250 megawatt coal-fired electric plant in northeastern Nevada estimated to cost \$600,000,000 and known as the Thousand Springs project, on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Industries, began in 1980 work to design, finance, construct, and operate (and section 203(b)(2) shall be applied with respect to such plant by substituting 'January 1, 1991' for 'January 1, 1991'),"

(E) in subparagraph (L), by inserting "in connection with" after "housing",

(F) by amending subparagraph (M) to read as follows:

"(M) property which is part of the Kenosha Downstream Redevelopment Project and which is financed with the proceeds of bonds issued pursuant to section 1317(6)

(G) in subparagraph (O), by striking out "New Orleans, Louisiana" and inserting in lieu thereof "Pensacola, Florida", and

Florida.

(H) in subparagraph (S)—

- (i) by inserting "to be" before "placed",
- (ii) by inserting "Coal" before "Company",
- (iii) by inserting "(or any subsidiary thereof)" after "Company", and
- (iv) by striking out "on December 31, 1985" and inserting in lieu thereof "by December 31, 1985".

(21) Subparagraph (T) of section 204(a)(32) of the Reform Act amended to read as follows:

26 USC 168 note.

"(T) a portion of a fiber optics network placed in service by LDX NET after December 31, 1988, but only to the extent the cost of such portion does not exceed \$25,000,000,".

(22) Subparagraph (U) of section 204(a)(32) of the Reform Act amended by striking out "placed in service" and inserting in lieu thereof "constructed".

(23) Subparagraph (X) of section 204(a)(32) of the Reform Act amended by striking out "the home rule city and the State housing finance agency adopted inducement resolutions on December 20, 1985" and inserting in lieu thereof "the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions".

(24) Subparagraph (C) of paragraph (33) of section 204(a) of the Reform Act is amended to read as follows:

Energy.
New Hampshire.

"(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately \$60,000,000, and

"(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately \$60,000,000,".

(25) Paragraph (33) of section 204(a) of the Reform Act is amended by striking out "and" at the end of subparagraph (J), striking out the period at the end of subparagraph (K) and inserting in lieu thereof ", and", and by inserting after subparagraph (K) the following:

Massachusetts.

"(L) a cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985."

(26) Subsection (a) of section 204 of the Reform Act is amended by adding at the end thereof the following new paragraphs:

"(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used exclusively on the plant premises if—

"(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

"(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

"(C) ground clearing for such plant began before August 1986, and

"(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

“(35) The amendments made by section 201 shall not apply to any property which is part of the multifamily housing at the Columbia Point Project in Boston, Massachusetts. A project shall be treated as not described in the preceding sentence if it is as not described in section 252(f)(1)(D) unless such project includes at substantially all times throughout the compliance period (within the meaning of section 42(i)(1) of the Internal Revenue Code of 1986), a facility which provides health services to the residents of such project for fees commensurate with the ability of such individuals to pay for such services.

“(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if—

“(A) in July of 1984 an initial binding construction contract was entered into for such facility,

“(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

“(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

“(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility constructed prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

“(38) The amendments made by section 201 shall not apply to—

“(A) a \$28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

“(B) an electrical cogeneration plant in Bethel, Maine, which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which \$200,000 of the expected \$2,000,000 cost had been committed before June 15, 1986,

“(C) a mixed income housing project in Portland, Maine, which is known as the Back Bay Tower and which was expected to cost \$17,300,000,

“(D) the Eastman Place project and office building in Rochester, New York, which is projected to cost \$20,000,000 with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of \$500,000 was entered into on April 30, 1986,

“(E) the Marquis Two project in Atlanta, Georgia, which has a total budget of \$72,000,000 and the construction project of which began under a contract entered into on March 1, 1986,

“(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed \$8,500,000,

“(G) the expansion of the capacity of an oil refinery facility in Rosemont, Minnesota from 137,000 to 200,000 barrels per day.

barrels per day which is expected to be completed by December 31, 1990, and

“(H) a project in Ransom, Pennsylvania which will burn coal waste (known as ‘culm’) with an approximate cost of \$64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

“(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed on or before March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina.”

(27) Subsection (b) of section 204 of the Reform Act is amended by inserting “(as amended by the Tax Reform Act of 1984)” immediately before the period at the end thereof.

26 USC 168 note.

(28) Subparagraph (A) of section 204(c)(1) of the Reform Act is amended by inserting “located in Pennsylvania and” before “constructed pursuant”.

Pennsylvania.

(29) Paragraph (3) of section 204(c) of the Reform Act is amended—

(A) by striking out “for the applicable date” and inserting in lieu thereof “(or, in the case of a project described in subparagraph (B), by substituting ‘April 1, 1992’) for the applicable date”,

(B) by striking out “before April 1, 1986” in subparagraph (A) and inserting in lieu thereof “on or before April 1, 1986”, and

(C) by adding at the end thereof the following:

“In the case of an aircraft described in subparagraph (A), section 203(b)(1)(A) shall be applied by substituting ‘April 1, 1986’ for ‘March 1, 1986’ and section 49(e)(1)(B) of the Internal Revenue Code of 1986 shall not apply.”

(30)(A) Paragraph (4) of section 204(c) of the Reform Act is amended by striking out all that precedes subparagraph (L) and inserting in lieu thereof the following:

“(4) The amendments made by section 201 shall not apply to a limited amount of the following property or a limited amount of property set forth in a submission before September 16, 1986, by the following taxpayers:

“(A) Arena project, Michigan, but only with respect to \$78,000,000 of investments.

“(B) Campbell Soup Company, Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Michigan, South Carolina, Texas, New Jersey, and Delaware, but only with respect to \$9,329,000 of regular investment tax credits.

“(C) The Southeast Overtown/Park West development, Florida, but only with respect to \$200,000,000 of investments.

“(D) Equipment placed in service and operated by Leggett and Platt before July 1, 1987, but only with respect to \$2,000,000 of regular investment tax credits, and subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to such equipment.

“(E) East Bank Housing Project.

“(F) \$1,561,215 of investments by Standard Telephone Company.

“(G) Five aircraft placed in service before January 1, 1987, by Presidential Air.

“(H) A rehabilitation project by Ann Arbor Railroad, but only with respect to \$2,900,000 of investments.

“(I) Property that is part of a cogeneration project located in Ada, Michigan, but only with respect to \$30,000,000 of investments.

“(J) Anchor Store Project, Michigan, but only with respect to \$21,000,000 of investments.

“(K) A waste-fired electrical generating facility of Biogen Power, but only with respect to \$34,000,000 of investments.”

26 USC 168 note.

(B) Paragraph (4) of section 204(c) of the Reform Act is amended by striking out all that follows subparagraph (L) and inserting in lieu thereof the following:

“(M) Interests of Samuel A. Hardage (whether owned individually or in partnership form).

“(N) Two aircraft of Mesa Airlines with an aggregate cost of \$5,723,484.

“(O) Yarn-spinning equipment used at Spray Cotton Mills, but only with respect to \$3,000,000 of investments.

“(P) 328 units of low-income housing at Angelus Plaza, but only with respect to \$20,500,000 of investments.

“(Q) One aircraft of Continental Aviation Services with a cost of approximately \$15,000,000 that was purchased pursuant to a contract entered into during March of 1983 and that is placed in service by December 31, 1988.”

(31) Paragraph (29) of section 204(a) of the Reform Act is amended—

(A) by striking out “January 18” in subparagraph (A) and inserting in lieu thereof “January 25”, and

(B) by striking out “law suits filed on June 22, 1984, and November 21, 1985” in subparagraph (B) and inserting in lieu thereof “a law suit filed on October 25, 1985”.

(32) Subparagraph (J) of section 204(a)(33) of the Reform Act, as amended by paragraph (25), is amended to read as follows:

“(J) A 25.85 megawatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986.”.

(33) Paragraph (3) of section 204(c) of the Reform Act is amended—

(A) by inserting “and” at the end of subparagraph (B),

(B) by striking out subparagraph (C), and

(C) by redesignating subparagraph (D) as subparagraph (C).

(34) Subclause (II) of section 204(a)(5)(J)(ii) of the Reform Act is amended to read as follows:

“(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of existing facilities to produce new models of a vehicle not currently produced in the United States, such facilities will be placed in service by July 1, 1987, and such Board action occurred in July 1985 with respect to a \$602,000,000 expendi-

ture, a \$438,000,000 expenditure, and a \$321,000,000 expenditure.”

(35) Subparagraph (T) of section 204(a)(5) of the Reform Act is amended to read as follows:

“(T) A project is described in this subparagraph if it is a plant facility on Alaska’s North Slope which is placed in service before January 1, 1988, and—

“(i) the approximate cost of which is \$675,000,000, of which approximately \$400,000,000 was spent on off-site construction,

“(ii) the approximate cost of which is \$445,000,000, of which approximately \$400,000,000 was spent on off-site construction and more than 50 percent of the project cost was spent prior to December 31, 1985, or

“(iii) the approximate cost of which is \$375,000,000, of which approximately \$260,000,000 was spent on off-site construction.”

AMENDMENTS RELATING TO SECTION 211 OF THE REFORM ACT.—

(1) Paragraph (1) of section 49(d) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—In the case of periods after December 31, 1985, with respect to so much of the credit determined under section 46(a) with respect to transition property as is attributable to the regular investment credit (as defined in subsection (5)(B))—

“(A) paragraphs (1), (2), and (7) of section 48(q) and section 48(d)(5) shall be applied by substituting ‘100 percent’ for ‘50 percent’ each place it appears, and

“(B) sections 48(q)(4) and 196(d) shall not apply.”

(2) Subparagraph (B) of section 49(c)(4) of the 1986 Code is amended to read as follows:

“(B) NO CARRYBACK FOR YEARS STRADDLING JULY 1, 1987; GROSS UP OF CARRYFORWARDS.—In any case to which paragraph (3) applies—

“(i) the amount of the reduction under paragraph (3) may not be carried back to any taxable year, but

“(ii) there shall be added to the carryforwards from the taxable year (before applying paragraph (2)) an amount equal to the amount which bears the same ratio to the carryforwards from such taxable year (determined without regard to this clause) as—

“(I) the applicable percentage, bears to

“(II) 1 minus the applicable percentage.”

(3) Clause (i) of section 49(c)(5)(B) of the 1986 Code is amended to read as follows:

“(i) IN GENERAL.—The term ‘regular investment credit’ means the credit determined under section 46(a) to the extent attributable to the regular percentage.”

(4) Paragraph (1) of section 211(e) of the Reform Act is amended by adding at the end thereof the following new sentence: “Section 49(c) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to taxable years ending after June 30, 1987, and to amounts carried to such taxable years.”

(5) Paragraph (4)(A) of section 211(e) of the Reform Act is amended—

Alaska.

26 USC 49 note.

(A) by striking out "Paragraphs (c) and (d) of section 49 of the Internal Revenue Code of 1954" and inserting in lieu thereof "Subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986", and

(B) by striking out "1935" and inserting in lieu thereof "1985".

26 USC 49 note.

(6) Paragraph (4)(B) of section 211(e) of the Reform Act is amended by striking out "shall be treated as transition property" and inserting in lieu thereof "shall be treated as transition property and subsections (c) and (d) of section 49 of such Code shall not apply to such property".

(7) Paragraph (4) of section 211(e) of the Reform Act is amended by adding at the end thereof the following new paragraphs:

Waste disposal.
Minnesota.

"(C) Any solid waste disposal facility which will process and incinerate solid waste of one or more public or private entities including Dakota County, Minnesota, and with respect to which a bond carryforward from 1985 was elected in an amount equal to \$12,500,000 shall be treated as transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986.

Maritime affairs.

"(D) For purposes of section 49 of such Code, the following property shall be treated as transition property:

Washington.

"(i) 2 catamarans built by a shipbuilder incorporated in the State of Washington in 1964, the contracts for which were signed on April 22, 1986 and November 1985, and 1 barge built by such shipbuilder the contract for which was signed on August 7, 1985.

"(ii) 2 large passenger ocean-going United States flag cruise ships with a passenger rated capacity of up to 250 which are built by the shipbuilder described in clause (i), which are the first such ships built in the United States since 1952, and which were designed at the request of a Pacific Coast cruise line pursuant to a contract entered into in October 1985. This clause shall apply only to that portion of the cost of each ship which does not exceed \$40,000,000.

Minnesota.

"(iii) Property placed in service during 1986 by Shellite Industries, Inc., with headquarters in Minneapolis, Minnesota, to the extent that the cost of such property does not exceed \$1,950,000.

"(E) Subsections (c) and (d) of section 49 of such Code shall not apply to property described in section 204(a)(4) of the Act."

(8)(A) Subsection (d) of section 38 is amended to read as follows:

"(d) ORDERING RULES.—For purposes of sections 46(f), 47(a), 196 and any other provision of this title where it is necessary to determine the extent to which the credits determined under this section referred to in subsection (b) are used in a taxable year or carryback or carryforward—

"(1) IN GENERAL.—The order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b) as of the close of the taxable year in which the credit is used.

"(2) COMPONENTS OF INVESTMENT CREDIT.—The order in which credits attributable to a percentage referred to in section 4

re used shall be determined on the basis of the order in which such percentages are listed in section 46(a) as of the close of the taxable year in which the credit is used.

“(3) CREDITS NO LONGER LISTED.—For purposes of this subsection—

“(A) the credit allowable by section 40, as in effect on the day before the date of the enactment of the Tax Reform Act of 1984, (relating to expenses of work incentive programs) and the credit allowable by section 41(a), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, (relating to employee stock ownership credit) shall be treated as referred to in that order after the last paragraph of subsection (b), and

“(B) the employee plan percentage (as defined in section 46(a)(2)(E), as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as referred to after section 46(a)(2).”

(B) Subparagraph (C) of section 49(c)(5) of the 1986 Code is hereby repealed.

(C) The amendments made by this paragraph shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.

26 USC 38 note.

AMENDMENTS RELATED TO SECTION 212 OF THE REFORM ACT.—

(1) Paragraph (2) of section 212(f) of the Reform Act is amended by striking out so much of such paragraph as precedes subparagraph (A) and insert in lieu thereof the following:

26 USC 38 note.

“(2) **SPECIAL RULE.—**In the case of the LTV Corporation, in lieu of the requirements of paragraph (1)—”.

(2) Subclause (I) of section 212(f)(2)(B)(i) of the Reform Act is amended by striking out “such involvement begins” and inserting in lieu thereof “when the corporation receives the refund”.

(3) Subsection (g) of section 212 of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(3) **SPECIAL RULE FOR RESTRUCTURING.—**In the case of any corporation, any restructuring shall not limit, increase, or otherwise affect the benefits which would have been available under this section but for such restructuring.”

(4) Section 212 of the Reform Act is amended by adding at the end thereof the following new subsection:

(5) **TENTATIVE REFUNDS.—**Rules similar to the rules of section 212 of the Internal Revenue Code of 1986 shall apply to any payment resulting from the application of this section.”

(5) Subparagraph (B) of section 212(g)(2) of the Reform Act is amended by striking out “determined under” and inserting in lieu thereof “determined for periods before January 1, 1986, under”.

(6) Section 212(f) of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(3) In the case of a qualified corporation, no offset to any refund under this section may be made by reason of any tax imposed by section 4971 of the Internal Revenue Code of 1986 (or any interest or penalty attributable to any such tax), and the date on which any such refund is to be paid shall be determined without regard to such corporation’s status under title 11, United States Code.”

AMENDMENT RELATED TO SECTION 213 OF THE REFORM ACT.—

Paragraph (B) of section 213(e)(2) of the Reform Act is amended

26 USC 38 note.

by striking out "determined under" and inserting in lieu thereof "determined for periods before January 1, 1986, under".

(h) **AMENDMENTS RELATED TO SECTION 231 OF THE REFORM ACT.**—

(1) Subsection (g) of section 41 of the 1986 Code is amended by adding at the end thereof the following new sentence: "If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39."

(2) Subsection (c) of section 6411 of the 1986 Code is amended by striking out "unused research credit,".

(3) Section 936(h)(5)(C)(i)(IV)(c) of the 1986 Code is amended—

(A) by striking out "section 30" and inserting in lieu thereof "section 41", and

(B) by striking out "section 30(f)" and inserting in lieu thereof "section 41(f)".

(i) **AMENDMENTS RELATED TO SECTIONS 241 AND 242 OF THE REFORM ACT.**—

(1) Section 167 of the 1986 Code is amended by redesignating subsection (r) as subsection (s) and by inserting after subsection (q) the following new subsection:

"(r) **TRADEMARK OR TRADE NAME EXPENDITURES NOT DEPRECIABLE.**—

"(1) **IN GENERAL.**—No depreciation deduction shall be allowable under this section (and no depreciation or amortization deduction shall be allowable under any other provision of this subtitle) with respect to any trademark or trade name expenditure.

"(2) **TRADEMARK OR TRADE NAME EXPENDITURE.**—For purposes of this subsection, the term 'trademark or trade name expenditure' means any expenditure which is directly connected with the acquisition, protection, expansion, registration (Federal, State, or foreign), or defense of a trademark or trade name."

(2)(A) Paragraph (1) of section 168(c) of the 1986 Code (as amended by section 102(a)) is amended by adding at the end thereof the following new item:

"Any railroad grading or tunnel bore 50 years."

(B)(i) Paragraph (3) of section 168(b) of the 1986 Code is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) Any railroad grading or tunnel bore."

(ii) Paragraph (5) of section 168(b) of the 1986 Code (as amended by section 102(a)) is amended by striking out "(3)(C)" and inserting in lieu thereof "(3)(D)".

(C) Subsection (e) of section 168 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) **RAILROAD GRADING OR TUNNEL BORE.**—The term 'railroad grading or tunnel bore' means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a road-bed or right-of-way for railroad track."

(D) Paragraph (2) of section 168(d) of the 1986 Code is amended by striking out “and” at the end of subparagraph (A), by inserting “and” at the end of subparagraph (B), and by inserting after subparagraph (B) the following new subparagraph:

“(C) any railroad grading or tunnel bore.”

(E) Clause (i) of section 168(d)(3)(B) of the 1986 Code (as amended by section 102(a)) is amended by striking out “and residential rental property” and inserting in lieu thereof “residential rental property, and railroad grading or tunnel bore”.

(F) The table contained in paragraph (2)(C) of section 168(g) of the 1986 Code is amended by adding at the end thereof the following new item:

“(iv) Any railroad grading or tunnel bore 50 years.”

(G) Subparagraph (E) of section 168(i)(1) of the 1986 Code is amended by adding at the end thereof the following new clause:

“(iii) SPECIAL RULE FOR RAILROAD GRADING OR TUNNEL BORES.—In the case of any property which is a railroad grading or tunnel bore—

“(I) such property shall be treated as an assigned property,

“(II) the recovery period applicable to such property shall be treated as an assigned item, and

“(III) clause (ii) of subparagraph (D) shall not apply.”

(H) The table contained in subparagraph (A) of section 467(e)(3) of the 1986 Code is amended by adding at the end thereof the following new item:

“Any railroad grading or tunnel bore 50 years.”

(I) Paragraph (3) of section 1245(a) of the 1986 Code is amended by striking out “or” at the end of subparagraph (D), by striking out the period at the end of subparagraph (E), and inserting in lieu thereof “, or”, and by adding at the end thereof the following new subparagraph:

“(F) any railroad grading or tunnel bore (as defined in section 168(e)(4)).”

(j) AMENDMENTS RELATED TO SECTION 243 OF THE REFORM ACT.—

(1) Section 243 of the Reform Act (related to deduction of bus and freight forwarder operating authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

26 USC 165 note.

“(d) APPLICATION OF SECTION 334(b)(2).—For purposes of subsections (a) and (b), the reference to section 334(b)(2) in section 266(c)(2)(A)(ii) of the Economic Recovery Tax Act of 1981 shall be a reference to such section as in effect before its repeal.”

(2) The heading of subparagraph (A) of section 243(b)(2) of the Reform Act is amended by striking out “TO BEGIN IN 1987”.

(k) AMENDMENTS RELATED TO SECTION 251 OF THE REFORM ACT.—

(1) Paragraph (2)(B) of section 251(d) of the Reform Act is amended by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

26 USC 46 note.

(2) Subparagraph (P) of section 251(d)(3) of the Reform Act is amended by striking out “San Francisco” and inserting in lieu thereof “San Jose, California”.

California.

(3) Paragraph (4) of section 251(d) of the Reform Act is amended—

(A) by striking out "Lakeland marbel Arcade" subparagraph (K) and inserting in lieu thereof "Marble Arcade office building",

(B) by striking out "and" at the end of subparagraph and

(C) by striking out subparagraph (Z) and inserting in thereof the following:

State listing.

"(Z) the Bigelow-Hartford Carpet Mill in Enfield, Connecticut,

"(AA) properties abutting 125th street in New York County from 7th Avenue west to Morningside and the area on the Hudson River at the end of such 125th Street

"(BB) the City of Los Angeles Central Library project pursuant to an agreement dated December 28, 1983,

"(CC) the Warehouse Row project in Chattanooga, Tennessee,

"(DD) any project described in section 204(a)(1)(F) of the Act,

"(EE) the Wood Street Commons project in Pittsburgh, Pennsylvania,

"(FF) any project described in section 803(d)(6) of this Act.

"(GG) Union Station, Indianapolis, Indiana,

"(HH) the Mattress Factory project in Pittsburgh, Pennsylvania,

"(II) Union Station in Providence, Rhode Island,

"(JJ) South Pack Plaza, Asheville, North Carolina,

"(KK) Old Louisville Trust Project, Louisville, Kentucky,

"(LL) Stewarts Rehabilitation Project, Louisville, Kentucky,

"(MM) Bernheim Officenter, Louisville, Kentucky,

"(NN) Springville Mill Project, Rockville, Connecticut and

"(OO) the D.J. Stewart Company Building, State Street, Main Streets, Rockford, Illinois."

26 USC 46 note.

(4) Subsection (d) of section 251 of the Reform Act is amended by striking out paragraph (6) and inserting in lieu thereof the following:

"(6) EXPENSING OF REHABILITATION EXPENSES FOR FRANKFORD ARSENAL.—In the case of any expenditures paid or incurred in connection with improvements (including repair and maintenance) of the Frankford Arsenal pursuant to a contract and partnership agreement during the 8-year period specified in the contract or agreement, all such expenditures shall be made during the period 1986 through and including 1995 shall—

"(A) be treated as made (and allowable as a deduction) during 1986,

"(B) be treated as qualified rehabilitation expenditures made during 1986, and

"(C) be allocated in accordance with the partnership agreement regardless of when the interest in the partnership was acquired, except that—

"(i) if the taxpayer is not the original holder of such interest, no person (other than the taxpayer) shall be treated as having claimed any benefits by reason of this paragraph,

“(ii) no interest under section 6611 of the 1986 Code on any refund of income taxes which is solely attributable to this paragraph shall be paid for the period—

“(I) beginning on the date which is 45 days after the later of April 15, 1987, or the date on which the return for such taxes was filed, and

“(II) ending on the date the taxpayer acquired the interest in the partnership, and

“(iii) if the expenditures to be made under this provision are not paid or incurred before January 1, 1994, then the tax imposed by chapter 1 of such Code for the taxpayer’s last taxable year beginning in 1993 shall be increased by the amount of the tax benefits by reason of this paragraph which are attributable to the expenditures not so paid or incurred.

“(7) SPECIAL RULE.—In the case of the rehabilitation of the Willard Hotel in Washington, D.C., section 205(c)(1)(B)(ii) of the Tax Equity and Fiscal Responsibility Act of 1982 shall be applied by substituting ‘1987’ for ‘1986’.”

District of
Columbia.

(5) Subparagraph (B) of section 251(d)(3) of the Reform Act is amended by striking out “Pontalba” and inserting in lieu thereof “Pontalba”.

26 USC 46 note.

(6) Subparagraph (T) of section 251(d)(4) of the Reform Act is amended by striking out “Louisville” and inserting in lieu thereof “Covington”.

AMENDMENTS RELATED TO SECTION 252 OF THE REFORM ACT.—

Housing.
Contracts.

(1)(A) Subparagraph (A) of section 42(b)(2) of the 1986 Code is amended by striking out “for the month” and all that follows and inserting in lieu thereof “for the earlier of—

“(i) the month in which such building is placed in service, or

“(ii) at the election of the taxpayer—

“(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

“(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.”

(B) Clause (ii) of section 42(b)(2)(C) of the 1986 Code is amended by striking out “the month in which the building was placed in service” and inserting in lieu thereof “the month applicable under clause (i) or (ii) of subparagraph (A)”.

(2)(A) Subparagraph (A) of section 42(c)(2) of the 1986 Code (defining qualified low-income building) is amended to read as follows:

Disadvantaged
persons.

“(A) which is part of a qualified low-income housing project at all times during the period—

“(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

“(ii) ending on the last day of the compliance period with respect to such building, and”.

(B) Paragraph (1) of section 42(f) of the 1986 Code (defining credit period) is amended by striking out "beginning with" and all that follows and inserting in lieu thereof "beginning with"

"(A) the taxable year in which the building is placed in service, or

"(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable."

(3) Clause (ii) of section 42(d)(2)(D) of the 1986 Code is amended to read as follows:

"(ii) **SPECIAL RULES FOR CERTAIN TRANSFERS.**—For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

"(I) in connection with the acquisition of a building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

"(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

"(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation, or

"(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building was resold within 12 months after the date such building is placed in service by such person after such foreclosure."

(4) Paragraph (3) of section 42(d) of the 1986 Code is amended to read as follows:

"(3) **ELIGIBLE BASIS REDUCED WHERE DISPROPORTIONATE SHARE UNITS.**—

"(A) **IN GENERAL.**—Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

"(B) **EXCEPTION WHERE TAXPAYER ELECTS TO EXCLUDE EXCESS COSTS.**—

"(i) **IN GENERAL.**—Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

“(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

“(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

“(ii) EXCESS.—The excess described in this clause with respect to any unit is the excess of—

“(I) the cost of such unit, over

“(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.”

(5) Subparagraph (A) of section 42(d)(5) of the 1986 Code is amended by inserting before the period “(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (A)(i)(II))”.

(6)(A) Paragraph (5) of section 42(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) ELIGIBLE BASIS NOT TO INCLUDE EXPENDITURES WHERE 167(k) ELECTED.—The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k).”

(B) Subparagraph (A) of section 42(d)(5) of the 1986 Code is amended by striking out “subparagraph (B)” and inserting in lieu thereof “subparagraphs (B) and (C)”.

(7) Subparagraph (A) of section 42(d)(6) of the 1986 Code is amended by inserting “or” at the end of clause (i), by striking out “, or” at the end of clause (ii) and inserting in lieu thereof a period, and by striking out clause (iii).

(8) Clause (ii) of section 42(d)(6)(B) of the 1986 Code (defining Federally assisted building) is amended by striking out “of 1934”.

(9)(A) Paragraph (3) of section 42(f) of the 1986 Code is amended to read as follows:

“(3) DETERMINATION OF APPLICABLE PERCENTAGE WITH RESPECT TO INCREASES IN QUALIFIED BASIS AFTER 1ST YEAR OF CREDIT PERIOD.—

“(A) IN GENERAL.—In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

Disadvantaged persons.

“(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

“(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to $\frac{2}{3}$ of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

“(B) 1ST YEAR COMPUTATION APPLIES.—A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.”

(B) Paragraph (3) of section 42(b) of the 1986 Code is amended to read as follows:

“(3) CROSS REFERENCES.—

“(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

“(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

“(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(6).”

(10) Subparagraph (B) of section 42(g)(2) of the 1986 Code (defining gross rent) is amended by striking out “Federal rental assistance” and inserting in lieu thereof “rental assistance”.

(11) Paragraph (2) of section 42(g) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) UNITS WHERE FEDERAL RENTAL ASSISTANCE IS REDUCED AS TENANT’S INCOME INCREASES.—If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

“(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

“(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

“(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

“(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.”

(12) Paragraph (3) of section 42(g) of the 1986 Code is amended to read as follows:

“(3) DATE FOR MEETING REQUIREMENTS.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 12-month period beginning on the date the building is placed in service.

“(B) BUILDINGS WHICH RELY ON LATER BUILDINGS FOR QUALIFICATION.—

“(i) IN GENERAL.—In determining whether a building (hereinafter in this subparagraph referred to as the

'prior building') is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

"(ii) **TREATMENT OF ELECTED BUILDINGS.**—In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

"(iii) **DATE PRIOR BUILDING IS TREATED AS PLACED IN SERVICE.**—For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

"(C) **SPECIAL RULE.**—A building—

"(i) other than the 1st building placed in service as part of a project, and

"(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service."

(13) Paragraph (4) of section 42(g) of the 1986 Code is amended by inserting before the period "; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection".

(14)(A) Paragraph (1) of section 42(h) of the 1986 Code is amended to read as follows:

"(1) **CREDIT MAY NOT EXCEED CREDIT AMOUNT ALLOCATED TO BUILDING.**—

"(A) **IN GENERAL.**—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

"(B) **TIME FOR MAKING ALLOCATION.**—Except in the case of an allocation which meets the requirements of subparagraph (C) or (D), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

"(C) **EXCEPTION WHERE BINDING COMMITMENT.**—An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

"(D) **EXCEPTION WHERE INCREASE IN QUALIFIED BASIS.**—

“(i) **IN GENERAL.**—An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

“(ii) **LIMITATION.**—The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

“(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

“(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

“(iii) **HOUSING CREDIT DOLLAR AMOUNT REDUCED BY FULL ALLOCATION.**—Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).”

(B) Clause (ii) of section 42(h)(6)(B) of the 1986 Code is hereby repealed.

(15) Subparagraph (A) of section 42(h)(4) of the 1986 Code is amended by striking out “financed” and all that follows and inserting in lieu thereof “financed by any obligation the interest on which is exempt from tax under section 103 if—

“(i) such obligation is taken into account under section 146, and

“(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.”

(16) Paragraph (5) of section 42(h) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

“(D) **TREATMENT OF CERTAIN SUBSIDIARIES.**—

“(i) **IN GENERAL.**—For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

“(ii) **QUALIFIED CORPORATION.**—For purposes of clause (ii), the term ‘qualified corporation’ means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.”

(17) Subparagraph (D) of section 42(h)(6) of the 1986 Code is amended to read as follows:

“(D) **CREDIT REDUCED IF ALLOCATED CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT WHICH WOULD BE ALLOWABLE WITHOUT REGARD TO PLACED IN SERVICE CONVENTION, ETC.**—

“(i) **IN GENERAL.**—The amount of the credit determined under this section with respect to any building

shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

“(ii) DETERMINATION OF PERCENTAGE.—For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

“(I) the housing credit dollar amount allocated to such building bears to

“(II) the credit amount determined in accordance with clause (iii).

“(iii) DETERMINATION OF CREDIT AMOUNT.—The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

“(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

“(II) subsection (f)(3)(A) were applied without regard to ‘the percentage equal to $\frac{2}{3}$ of’.”

18) Paragraph (6) of section 42(h) of the 1986 Code is amended adding at the end thereof the following new subparagraph:

“(E) HOUSING CREDIT AGENCY TO SPECIFY APPLICABLE PERCENTAGE AND MAXIMUM QUALIFIED BASIS.—In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.”

19)(A) Subparagraph (A) of section 42(i)(2) of the 1986 Code is amended—

(i) by inserting “or any prior taxable year” after “such taxable year”,

(ii) by striking out “there is outstanding” and inserting in lieu thereof “there is or was outstanding”, and

(iii) by striking out “are used” and inserting in lieu thereof “are or were used”.

(B) Subparagraph (B) of section 42(i)(2) of the 1986 Code is amended to read as follows:

“(B) ELECTION TO REDUCE ELIGIBLE BASIS BY BALANCE OF LOAN OR PROCEEDS OF OBLIGATIONS.—A loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d)—

“(i) in the case of a loan, the principal amount of such loan, and

“(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.”

(C) Paragraph (2) of section 42(i) of the 1986 Code is amended redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

“(C) SPECIAL RULE FOR SUBSIDIZED CONSTRUCTION FINANCING.—Subparagraph (A) shall not apply to any tax-exempt

obligation or below market Federal loan used to provide construction financing for any building if—

“(i) such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and

“(ii) such obligation is redeemed, and such loan is repaid, before such building is placed in service.”

(D) Subparagraph (D) of section 42(i)(2) of the 1986 Code is amended by striking out “subparagraph (A)” and inserting in lieu thereof “this paragraph”.

(20) Paragraph (4) of section 42(j) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(F) NO RECAPTURE WHERE DE MINIMIS CHANGES IN FLOOR SPACE.—The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

“(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

“(ii) the building is a qualified low-income building after such change.”

(21) Clause (i) of section 42(j)(5)(B) of the 1986 Code is amended to read as follows:

“(i) more than $\frac{1}{2}$ the capital interests, and more than $\frac{1}{2}$ the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and”.

(22) Paragraph (6) of section 42(j) of the 1986 Code is amended—

(A) by inserting “(OR INTEREST THEREIN)” after “BUILDING” in the heading, and

(B) by inserting “or an interest therein” after “disposition of a building” in the text.

(23) Subparagraph (B) of section 42(k)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: “, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

“(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

“(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.”

(24)(A) Subsection (l) of section 42 of the 1986 Code is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

“(2) ANNUAL REPORTS TO THE SECRETARY.—The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

“(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

“(B) the information described in paragraph (1)(C) for the taxable year, and

“(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.”

(B) The subsection heading of subsection (l) of section 42 is amended to read as follows:

“(l) CERTIFICATIONS AND OTHER REPORTS TO SECRETARY.—”

(25) Paragraph (1) of section 42(n) of the 1986 Code is amended by inserting before the period at the end thereof the following: “, and, except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989”.

(26) Subsection (d) of section 39 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) NO CARRYBACK OF LOW-INCOME HOUSING CREDIT BEFORE 1987.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 42 (relating to low-income housing credit) may be carried back to a taxable year ending before January 1, 1987.”

(27) Paragraph (1) of section 55(c) of the 1986 Code (defining regular tax) is amended by striking out “section 42(j)” and inserting in lieu thereof “subsection (j) or (k) of section 42”.

(28) Subparagraph (A) of section 252(f)(1) of the Reform Act is amended by striking out “and” at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof a comma, and by inserting after clause (ii) the following new clauses:

26 USC 42 note.

“(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

“(iv) the amendments made by section 803 shall not apply.”

(29) Subparagraph (E) of section 252(f)(1) of the Reform Act is amended by striking out “maximum annual additional credit” and inserting in lieu thereof “maximum present value of additional credits”.

(30) Subparagraph (E) of section 252(f)(2) of the Reform Act is amended by adding at the end thereof the following new sentence: “The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building.”

Housing.

(31) Subsection (f) of section 252 of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(5) TRANSITIONAL RULE.—In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana—

Indiana.
Community
development.

“(A) the amendments made by this section shall not apply, and

“(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase ‘and before January 1, 1987’.

The number of units to which the preceding sentence applies shall not exceed 150.”

(32) Subsection (g) of section 42 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(6) SPECIAL RULE WHERE DE MINIMIS EQUITY CONTRIBUTION.—Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

“(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

“(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted.”

(m) AMENDMENTS RELATED TO SECTION 261 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 7518(g)(6) of the 1986 Code, is amended by striking out “section 1(i)” and inserting in lieu thereof “section 1(j)”.

(2) Subparagraph (A) of section 607(h)(6) of the Merchant Marine Act, 1936 is amended by striking out “section 1(i)” and inserting in lieu thereof “section 1(j)”.

46 USC app.
1177.

SEC. 1003. AMENDMENTS RELATED TO TITLE III OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 301 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 172(d)(4) of the 1986 Code is amended by striking out “, (2)(B),”.

(2) Paragraph (1) of section 3402(m) of the 1986 Code is amended by striking out “section 62) (other than paragraph (13) thereof)” and inserting in lieu thereof “section 62(a) (other than paragraph (10) thereof)”.

(3) Paragraph (2) of section 1212(b) of the 1986 Code is amended to read as follows:

“(2) TREATMENT OF AMOUNTS ALLOWED UNDER SECTION 1211 (b)

(1) OR (2).—

“(A) IN GENERAL.—For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), there shall be treated as a short-term capital gain in the taxable year an amount equal to the lesser of—

“(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

“(ii) the adjusted taxable income for such taxable year.

“(B) ADJUSTED TAXABLE INCOME.—For purposes of subparagraph (A), the term ‘adjusted taxable income’ means taxable income increased by the sum of—

“(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), and

“(ii) the deduction allowed for such year under section 151 or any deduction in lieu thereof.

For purposes of the preceding sentence, any excess of the deductions allowed for the taxable year over the gross income for such year shall be taken into account as negative taxable income.”

(b) AMENDMENTS RELATED TO SECTION 302 OF THE REFORM ACT.—

(1) Section 302 of the Reform Act is amended by striking out subsection (c).

26 USC 1 note.

(2)(A) Paragraph (2) of section 904(b) of the 1986 Code is amended to read as follows:

“(2) CAPITAL GAINS.—For purposes of this section—

“(A) IN GENERAL.—Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

“(B) SPECIAL RULES WHERE CAPITAL GAIN RATE DIFFERENTIAL.—In the case of any taxable year for which there is a capital gain rate differential—

“(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

“(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

“(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain.”

(B) Paragraph (3) of section 904(b) of the 1986 Code is amended by striking out subparagraph (D) and inserting in lieu thereof the following new subparagraphs:

“(D) CAPITAL GAIN RATE DIFFERENTIAL.—There is a capital gain rate differential for any taxable year if—

“(i) in the case of a taxpayer other than a corporation, subsection (j) of section 1 applies to such taxable year, or

“(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831 (a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)).

“(E) RATE DIFFERENTIAL PORTION.—

“(i) IN GENERAL.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

“(I) the excess of the highest applicable tax rate over the alternative tax rate, bears to

“(II) the highest applicable tax rate.

“(ii) HIGHEST APPLICABLE TAX RATE.—For purposes of clause (i), the term ‘highest applicable tax rate’ means—

“(I) in the case of a taxpayer other than a corporation, the highest rate of tax set forth in subsec-

tion (a), (b), (c), (d), or (e) of section 1 (whichever applies), or

“(II) in the case of a corporation, the highest rate of tax specified in section 11(b).

“(iii) **ALTERNATIVE TAX RATE.**—For purposes of clause (i), the term ‘alternative tax rate’ means—

“(I) in the case of a taxpayer other than a corporation, the alternative rate of tax determined under section 1(j), or

“(II) in the case of a corporation, the alternative rate of tax under section 1201(a).”

(3) Effective for taxable years beginning after December 31, 1987, paragraph (1) of section 1445(e) of the 1986 Code is amended by striking out “34 percent” and inserting in lieu thereof “34 percent (or, to the extent provided in regulations, percent)”.

(c) **AMENDMENTS RELATED TO SECTION 311 OF THE REFORM ACT.**

(1) Subsection (a) of section 1201 of the 1986 Code is amended by striking out “831(a)” and inserting in lieu thereof “831 (or (b))”.

(2) Subsection (c) of section 311 of the Reform Act is amended by inserting before the period at the end thereof the following: “; except that the amendment made by subsection (b)(4) shall apply to payments made after December 31, 1986”.

(3) Subparagraph (D) of section 593(b)(2) of the 1986 Code is amended by striking out “and” at the end of clause (iii), striking out the period at the end of clause (iv) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new clause:

“(v) if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year, excluding from gross income the rate differential portion (within the meaning of section 904(b)(3)(E)) of the lesser of—

“(I) the net long-term capital gain for the taxable year, or

“(II) the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii).”

(d) **AMENDMENT RELATED TO SECTION 321 OF THE REFORM ACT.**

(1)(A) Subsection (b) of section 422A of the 1986 Code is amended by adding at the end thereof the following new sentence:

“Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option.”

(B) In the case of an option granted after December 31, 1987, and on or before the date of the enactment of this Act, such option shall not be treated as an incentive stock option if the terms of such option are amended before the date 90 days after such date of enactment to provide that such option will not be treated as an incentive stock option.

(2)(A) Section 422A of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(d) **\$100,000 PER YEAR LIMITATION.**—

“(1) **IN GENERAL.**—To the extent that the aggregate fair market value of stock with respect to which incentive stock

26 USC 1201
note.

26 USC 422A
note.

options (determined without regard to this subsection) are exercisable for the 1st time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) exceeds \$100,000, such options shall be treated as options which are not incentive stock options.

"(2) ORDERING RULE.—Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

"(3) DETERMINATION OF FAIR MARKET VALUE.—For purposes of paragraph (1), the fair market value of any stock shall be determined as of the time the option with respect to such stock is granted."

(B) Subsection (b) of section 422A of the 1986 Code is amended by adding "and" at the end of paragraph (5), by striking out "; and" at the end of paragraph (6) and inserting in lieu thereof a period, and by striking out paragraph (7).

(C) Paragraph (1) of section 422A(c) of the 1986 Code is amended by striking out "paragraph (7) of subsection (b)" and inserting in lieu thereof "subsection (d)".

SEC 1004. AMENDMENTS RELATED TO TITLE IV OF THE REFORM ACT.

Agriculture and
agricultural
commodities.

(a) AMENDMENTS RELATED TO SECTION 405 OF THE REFORM ACT.—

(1) Paragraph (1) of section 108(a) of the 1986 Code is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or" and by adding at the end thereof the following new subparagraph:

"(C) the indebtedness discharged is qualified farm indebtedness."

(2) Paragraph (2) of section 108(a) of the 1986 Code is amended to read as follows:

"(2) COORDINATION OF EXCLUSIONS.—

"(A) TITLE 11 EXCLUSION TAKES PRECEDENCE.—Subparagraphs (B) and (C) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

"(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION.—Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

(3) Subsection (b) of section 108 of the 1986 Code is amended—

(A) by striking out "subparagraph (A) or (B)" in paragraph (1) and inserting in lieu thereof "subparagraph (A), (B), or (C)", and

(B) by striking out "IN TITLE 11 CASE OR INSOLVENCY" in the subsection heading.

(4) Subsection (g) of section 108 of the 1986 Code is amended to read as follows:

"(g) SPECIAL RULES FOR DISCHARGE OF QUALIFIED FARM INDEBTEDNESS.—

"(1) DISCHARGE MUST BE BY QUALIFIED PERSON.—

"(A) IN GENERAL.—Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

"(B) QUALIFIED PERSON.—For purposes of subparagraph (A), the term 'qualified person' has the meaning given to such term by section 46(c)(8)(D)(iv); except that such term

shall include any Federal, State, or local government or agency or instrumentality thereof.

“(2) **QUALIFIED FARM INDEBTEDNESS.**—For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

“(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

“(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

“(3) **AMOUNT EXCLUDED CANNOT EXCEED SUM OF TAX ATTRIBUTES AND BUSINESS AND INVESTMENT ASSETS.**—

“(A) **IN GENERAL.**—The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

“(i) the adjusted tax attributes of the taxpayer, and

“(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

“(B) **ADJUSTED TAX ATTRIBUTES.**—For purposes of subparagraph (A), the term ‘adjusted tax attributes’ means the sum of the tax attributes described in subparagraphs (A), (B), (C), and (E) of subsection (b)(2) determined by taking into account \$3 for each \$1 of the attributes described in subparagraphs (B) and (E) of subsection (b)(2).

“(C) **QUALIFIED PROPERTY.**—For purposes of this paragraph, the term ‘qualified property’ means any property which is used or is held for use in a trade or business or for the production of income.

“(D) **COORDINATION WITH INSOLVENCY EXCLUSION.**—For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B).”

(5) Paragraph (4) of section 1017(b) of the 1986 Code is amended to read as follows:

“(4) **SPECIAL RULES FOR QUALIFIED FARM INDEBTEDNESS.**—

“(A) **IN GENERAL.**—Any amount which under subsection (b)(2)(D) of section 108 is to be applied to reduce basis and which is attributable to an amount excluded under subsection (a)(1)(C) of section 108—

“(i) shall be applied only to reduce the basis of qualified property held by the taxpayer, and

“(ii) shall be applied to reduce the basis of qualified property in the following order:

“(I) First the basis of qualified property which is depreciable property.

“(II) Second the basis of qualified property which is land used or held for use in the trade or business of farming.

“(III) Then the basis of other qualified property.

“(B) **QUALIFIED PROPERTY.**—For purposes of this paragraph, the term ‘qualified property’ has the meaning given to such term by section 108(g)(3)(C).

“(C) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraph (C), (D), and (E) of paragraph (3) shall apply for purposes of this paragraph and section 108(g).”

(6)(A) Paragraphs (6) and (7) of section 108(d) of the 1986 Code are each amended by striking out “subsections (a) and (b)” and inserting in lieu thereof “subsections (a), (b), and (g)”.

(B) The subsection heading for section 108(d) of the 1986 Code is amended by striking out “SUBSECTIONS (a), AND (b)” and inserting in lieu thereof “SUBSECTIONS (a), (b), AND (g)”.

(C) The headings for paragraphs (6) and (7)(A) of section 108(d) of the 1986 Code are each amended by striking out “SUBSECTIONS (a) AND (b)” and inserting in lieu thereof “SUBSECTIONS (a), (b), AND (g)”.

AMENDMENT RELATED TO SECTION 406 OF THE REFORM ACT.—Section 406 of the Reform Act is amended—

(1) by inserting “before October 1, 1987,” after “from the sale”, and

(2) by striking out “to the extent such gain” and all that follows down through the period at the end thereof and inserting in lieu thereof “to the extent such gain is properly taken into account under the taxpayer’s method of accounting during 1987.”.

AMENDMENT RELATED TO SECTION 413 OF THE REFORM ACT.—Section (a) of section 1254 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) ADJUSTMENT FOR AMOUNTS INCLUDED IN GROSS INCOME UNDER SECTION 617 (b) (1) (A).—The amount of the expenditures referred to in paragraph (1)(A)(i) shall be properly adjusted for amounts included in gross income under section 617(b)(1)(A).”

1005. AMENDMENTS RELATED TO TITLE V OF THE REFORM ACT.

AMENDMENTS RELATED TO SECTION 501 OF THE REFORM ACT.—

(1) Clause (ii) of section 469(e)(1)(A) of the 1986 Code (relating to certain income not treated as income from passive activity) is amended by inserting “not derived in the ordinary course of a trade or business which is” after “gain or loss”.

(2)(A) Subparagraph (A) of section 469(g)(1) of the 1986 Code (relating to disposition of interests in passive activities in fully taxable transactions) is amended to read as follows:

“(A) IN GENERAL.—If all gain or loss realized on such disposition is recognized, the excess of—

“(i) the sum of—

“(I) any loss from such activity for such taxable year (determined after application of subsection (b)), plus

“(II) any loss realized on such disposition, over

“(ii) net income or gain for such taxable year from all passive activities (determined without regard to losses described in clause (i)),

shall be treated as a loss which is not from a passive activity.”

(B) Subparagraph (C) of section 469(g)(1) of the 1986 Code is amended to read as follows:

“(C) INCOME FROM PRIOR YEARS.—To the extent provided in regulations, income or gain from the activity for preceding taxable years shall be taken into account under

26 USC 1202
note.

subparagraph (A)(ii) for the taxable year to the extent necessary to prevent the avoidance of this section.”

(3) Subparagraph (A) of section 469(g)(2) of the 1986 Code is amended—

(A) by striking out “paragraph (1)” and inserting in lieu thereof “paragraph (1)(A)”; and

(B) by striking out “such losses” the first place it appears and inserting in lieu thereof “losses described in paragraph (1)(A)”.

(4) Section 469(g)(3) of the 1986 Code is amended—

(A) by striking out “realized (or to be realized)” and inserting in lieu thereof “(realized or to be realized”, and

(B) by inserting a closing parenthesis after “completed”.

(5) Paragraph (4) of section 469(h) of the 1986 Code (relating to certain closely held C corporations and personal service corporations) is amended by inserting “only” before “if”.

(6) Paragraph (1) of section 469(i) of the 1986 Code (relating to \$25,000 offset for rental real estate activities) is amended by striking out “in the taxable year in which such portion of such loss or credit arose” and inserting in lieu thereof “in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year)”.

(7) Subparagraph (C) of section 469(i)(6) of the 1986 Code (relating to interest as a limited partner) is amended by striking out “No” and inserting in lieu thereof “Except as provided in regulations, no”.

(8) Subparagraph (A) of section 469(j)(6) of the 1986 Code (relating to special rule for gifts) is amended by inserting “with respect to which a deduction has not been allowed by reason of subsection (a)” before “, and”.

(9) Section 469(j) of the 1986 Code (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraphs:

“(10) COORDINATION WITH SECTION 280A.—If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.

“(11) AGGREGATION OF MEMBERS OF AFFILIATED GROUPS.—Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation.”

(10) Section 501(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(4) INCOME FROM SALES OF PASSIVE ACTIVITIES IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1987.—If—

“(A) gain is recognized in a taxable year beginning after December 31, 1986, from a sale or exchange of an interest in an activity in a taxable year beginning before January 1, 1987, and

“(B) such gain would have been treated as gain from a passive activity had section 469 of the Internal Revenue Code of 1986 (as added by this section) been in effect for the taxable year in which the sale or exchange occurred and for all succeeding taxable years,

then such gain shall be treated as gain from a passive activity for purposes of such section.”

(11) Subsection (j) of section 469 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(12) SPECIAL RULE FOR DISTRIBUTIONS BY ESTATES OR TRUSTS.—If any interest in a passive activity is distributed by an estate or trust—

“(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

“(B) such losses shall not be allowable as a deduction for any taxable year.”

(12) Subsection (m) of section 469 of the 1986 Code, as redesignated by section 10211 of the Revenue Act of 1987, is amended by striking all that precedes subparagraph (B) of paragraph (3) thereof and inserting in lieu thereof the following:

(m) PHASE-IN OF DISALLOWANCE OF LOSSES AND CREDITS FOR INTEREST HELD BEFORE DATE OF ENACTMENT.—

“(1) IN GENERAL.—In the case of any passive activity loss or passive activity credit for any taxable year beginning in calendar years 1987 through 1990, subsection (a) shall not apply to the applicable percentage of that portion of such loss (or such credit) which is attributable to pre-enactment interests.

“(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	The applicable percentage is:
1987.....	65
1988.....	40
1989.....	20
1990.....	10.

“(3) PORTION OF LOSS OR CREDIT ATTRIBUTABLE TO PRE-ENACTMENT INTERESTS.—For purposes of this subsection—

“(A) IN GENERAL.—The portion of the passive activity loss (or passive activity credit) for any taxable year which is attributable to pre-enactment interests is the lesser of—

“(i) the amount of the passive activity loss (or passive activity credit) which is disallowed for the taxable year under subsection (a) (without regard to this subsection), or

“(ii) the amount of the passive activity loss (or passive activity credit) which would be disallowed for the taxable year (without regard to this subsection and without regard to any amount allocable to an activity for the taxable year under subsection (b)) taking into account only pre-enactment interests.”

(d) AMENDMENTS RELATED TO SECTION 502 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 502(d)(1) of the Reform Act (defining qualified investor) is amended to read as follows:

“(A) if—

“(i) in the case of a project placed in service on or before August 16, 1986, such person held an interest in such project on August 16, 1986, and such person made his initial investment after December 31, 1983, or

“(ii) in the case of a project placed in service after August 16, 1986, such person made his initial investment after December 31, 1983, and such person held an interest in such project on December 31, 1986, and”.

26 USC 469 note.

26 USC 469 note.

(2) Subsection (d) of section 502 of the Reform Act (defining qualified investor) is amended by adding after paragraph (2) the following new paragraph:

“(3) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—In the case of any property which is held by a partnership—

“(A) which placed such property in service on or after December 31, 1985, and before August 17, 1986, and continuously held such property through the close of the taxable year for which the determination is being made, and

“(B) which was not treated as a new partnership or as terminated at any time on or after the date on which such property was placed in service and through the close of the taxable year for which the determination is being made, paragraph (1)(A)(i) shall be applied by substituting ‘December 31, 1988’ for ‘August 16, 1986’ the 2nd place it appears.”

(3) The subsection (d) of section 502 of the Reform Act which relates to special rules is redesignated as subsection (e).

(c) AMENDMENTS RELATED TO SECTION 511 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 163(d)(3) of the 1986 Code (defining investment interest) is amended by striking out “incurred or continued to purchase or carry” and inserting in lieu thereof “properly allocable to”.

(2) Subparagraph (B) of section 163(d)(4) of the 1986 Code is amended to read as follows:

“(B) INVESTMENT INCOME.—The term ‘investment income’ means the sum of—

“(i) gross income (other than gain taken into account under clause (ii)) from property held for investment, and

“(ii) any net gain attributable to the disposition of property held for investment.”

(3) Subparagraph (A) of section 163(d)(6) of the 1986 Code is amended to read as follows:

“(A) IN GENERAL.—The amount of interest paid or accrued during any such taxable year which is disallowed under this subsection shall not exceed the sum of—

“(i) the amount which would be disallowed under this subsection if—

“(I) paragraph (1) were applied by substituting ‘the sum of the ceiling amount and the net investment income’ for ‘the net investment income’, and

“(II) paragraphs (4)(E) and (5)(A)(ii) did not apply, and

“(ii) the applicable percentage of the excess of—

“(I) the amount which (without regard to this paragraph) is not allowable as a deduction under this subsection for the taxable year, over

“(II) the amount described in clause (i).

The preceding sentence shall not apply to any interest treated as paid or accrued during the taxable year under paragraph (2).”

(4) Subparagraph (A) of section 163(h)(2) of the 1986 Code is amended by striking out “incurred or continued in connection with the conduct of” and inserting in lieu thereof “properly allocable to”.

(5) Subparagraph (C) of section 163(h)(3) of the 1986 Code (defining qualified residence interest) is amended to read as follows:

“(C) COST NOT LESS THAN BALANCE OF INDEBTEDNESS INCURRED ON OR BEFORE AUGUST 16, 1986.—

“(i) IN GENERAL.—The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding principal amount (as of such time) of indebtedness—

“(I) which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986, or

“(II) which is secured by the qualified residence and was incurred after August 16, 1986, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

“(ii) LIMITATION ON PERIOD OF REFINANCING.—Subclause (II) of clause (i) shall not apply to any indebtedness after—

“(I) the expiration of the term of the indebtedness described in clause (i)(I), or

“(II) if the principal of the indebtedness described in clause (i)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such refinancing).”

(6)(A) The heading for section 163(h)(5) of the 1986 Code is amended to read as follows:

“(5) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—”

(B) Paragraph (5) of section 163(h) of the 1986 Code is amended—

(i) by striking out “For purposes of this subsection—” in subparagraph (A), and

(ii) by striking out “For purposes of this paragraph, any” in subparagraph (B) and inserting in lieu thereof “Any”.

(7) Clause (iii) of section 163(h)(5)(A) of the 1986 Code is amended by striking out “USED OR” in the heading thereof and striking out “or use”.

(8) Section 163(h)(5) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

“(C) UNENFORCEABLE SECURITY INTERESTS.—Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

“(D) SPECIAL RULES FOR ESTATES AND TRUSTS.—For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a

qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust."

(9) Paragraph (6) of section 163(h) of the 1986 Code is amended by striking out "subsection" the 3rd place it appears and inserting in lieu thereof "paragraph".

(10) Paragraph (2)(A) of section 511(d) of the Reform Act is amended to read as follows:

"(2)(A) Sections 467(c)(5) and 1255(b)(2) are each amended by striking out '163(d),'."

26 USC 469 note.

(11) If—

(A) any amount was disallowed as a deduction under section 163(d) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Reform Act),

(B) such amount would (but for this paragraph) be treated as investment interest paid or accrued by the taxpayer in the taxpayer's first taxable year beginning after December 31, 1986, and

(C) the taxpayer makes an election under this paragraph at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe, to the extent such amount is attributable to an activity subject to the limitations of section 469 of the 1986 Code, such amount shall not be treated as investment interest but shall be treated as a deduction allocable to such activity for such first taxable year. Subsection (m) of section 469 of the 1986 Code and section 501(c)(2) of the Reform Act shall not apply to any amount so treated.

(12) Subparagraph (E) of section 163(h)(2) of the 1986 Code is amended by inserting before the period "or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)".

26 USC 163 note.

(13) For purposes of applying the amendments made by this subsection and the amendments made by section 10102 of the Revenue Act of 1987, the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987.

26 USC 163 note.

(14)(A) For purposes of applying section 163(h) of the 1986 Code to any taxable year beginning during 1987, if, incident to a divorce or legal separation—

(i) an individual acquires the interest of a spouse or former spouse in a qualified residence in a transfer to which section 1041 of the 1986 Code applies, and

(ii) such individual incurs indebtedness which is secured by such qualified residence, the amount determined under paragraph (3)(B)(ii)(I) of section 163(h) of the 1986 Code (as in effect before the amendments made by the Revenue Act of 1987) with respect to such qualified residence shall be increased by the amount determined under subparagraph (B).

(B) The amount determined under this subparagraph shall be equal to the excess (if any) of—

(i) the lesser of the amount of the indebtedness described in subparagraph (A)(ii), or the fair market value of the

spouse's or former spouse's interest in the qualified residence as of the time of the transfer, over

(ii) the basis of the spouse or former spouse in such interest in such residence (adjusted only by the cost of any improvements to such residence).

(15) Clause (i) of section 7872(d)(1)(E) of the 1986 Code is amended by striking out "section 163(d)(3)" and inserting in lieu thereof "section 163(d)(4)".

1006. AMENDMENTS RELATED TO TITLE VI OF THE REFORM ACT.

(d) AMENDMENT RELATED TO SECTION 601 OF THE REFORM ACT.—Section 15 of the 1986 Code is amended by adding at the end thereof the following new subsection:

(e) REFERENCES TO HIGHEST RATE.—If the change referred to in section (a) involves a change in the highest rate of tax imposed by section 1 or 11(b), any reference in this chapter to such highest rate (other than in a provision imposing a tax by reference to such rate) shall be treated as a reference to the weighted average of the highest rates before and after the change determined on the basis of the respective portions of the taxable year before the date of the change and on or after the date of the change."

(f) AMENDMENTS RELATED TO SECTIONS 611 AND 612 OF THE REFORM ACT.—

26 USC 245 note.

(1) In the case of dividends received or accrued during 1987—

(A) subparagraph (B) of section 245(c)(1) of the 1986 Code shall be applied by substituting "80 percent" for the percentage specified therein, and

(B) subparagraph (B) of section 861(a)(2) of the 1986 Code shall be applied by substituting "¹⁰⁰/₈₀ths" for the fraction specified therein.

(2) Paragraph (3) of section 854(b) of the 1986 Code is amended to read as follows:

"(3) AGGREGATE DIVIDENDS.—For purposes of this subsection—

"(A) IN GENERAL.—In computing the amount of aggregate dividends received, there shall only be taken into account dividends received from domestic corporations.

"(B) DIVIDENDS.—For purposes of subparagraph (A), the term 'dividend' shall not include any distribution from—

"(i) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations), or

"(ii) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following).

"(C) LIMITATIONS ON DIVIDENDS FROM REGULATED INVESTMENT COMPANIES.—In determining the amount of any dividend for purposes of this paragraph, a dividend received from a regulated investment company shall be subject to the limitations prescribed in this section."

(g) AMENDMENTS RELATED TO SECTION 614 OF THE REFORM ACT.—

(1) Section 1059(d) of the 1986 Code (relating to extension to certain property distributions) is amended by striking out para-

graph (5) and redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(2) Section 1059(d)(5) of the 1986 Code (defining dividend announcement date), as redesignated by paragraph (1), is amended by inserting "amount or," before "payment".

(3) Section 1059(d)(6) of the 1986 Code (relating to exception where stock held during entire existence of corporation), as redesignated by paragraph (1), is amended to read as follows:

"(6) EXCEPTION WHERE STOCK HELD DURING ENTIRE EXISTENCE OF CORPORATION.—

"(A) IN GENERAL.—Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

"(i) such stock was held by the taxpayer during the entire period such corporation was in existence, and

"(ii) except as provided in regulations, no earnings and profits of such corporation were attributable to transfers of property from (or earnings and profits of) a corporation which is not a qualified corporation.

"(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means any corporation (including a predecessor corporation)—

"(i) with respect to which the taxpayer holds directly or indirectly during the entire period of such corporation's existence at least the same ownership interest as the taxpayer holds in the corporation distributing the extraordinary dividend, and

"(ii) which has no earnings and profits—

"(I) which were earned by, or

"(II) which are attributable to gain on property which accrued during a period the corporation holding the property was,

a corporation not described in clause (i).

"(C) APPLICATION OF PARAGRAPH.—This paragraph shall not apply to any extraordinary dividend to the extent such application is inconsistent with the purposes of this section."

(4) Paragraph (1) of section 1059(e) of the 1986 Code (relating to treatment of partial liquidation) is amended by striking out "for purposes of this section (without regard to the holding period of the stock)" and inserting in lieu thereof: "to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock".

(5) Paragraph (2) of section 1059(e) of the 1986 Code (relating to qualifying dividends) is amended to read as follows:

"(2) QUALIFYING DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in regulations, the term 'extraordinary dividend' does not include any qualifying dividend (within the meaning of section 243).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any portion of a dividend which is attributable to earnings and profits which—

"(i) were earned by a corporation during a period it was not a member of the affiliated group, or

"(ii) are attributable to gain on property which accrued during a period the corporation holding the property was not a member of the affiliated group."

(6) Subparagraph (A) of section 1059(e)(3) of the 1986 Code (relating to qualified preferred dividends) is amended to read as follows:

“(A) IN GENERAL.—In the case of 1 or more qualified preferred dividends with respect to any share of stock—

“(i) this section shall not apply to such dividends if the taxpayer holds such stock for more than 5 years, and

“(ii) if the taxpayer disposes of such stock before it has been held for more than 5 years, the aggregate reduction under subsection (a)(1) with respect to such dividends shall not be greater than the excess (if any) of—

“(I) the qualified preferred dividends paid with respect to such stock during the period the taxpayer held such stock, over

“(II) the qualified preferred dividends which would have been paid during such period on the basis of the stated rate of return.”

(7) Clause (i) of section 1059(e)(3)(C) of the 1986 Code is amended—

(A) by striking out “any dividend payable” and inserting in lieu thereof “any fixed dividend payable”, and

(B) by adding at the end thereof the following new sentence:

“Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.”

(8) Subparagraph (B) of section 1059(e)(3) of the 1986 Code is amended—

(A) by striking out “subparagraph (A)” and the material preceding clause (i) and inserting in lieu thereof “this paragraph”, and

(B) by striking out “subparagraph (B)(i)(II)” in clause (ii) and inserting in lieu thereof “clause (i)(II)”.

(9) Subsection (f) of section 1059 of the 1986 Code is amended by inserting before the period at the end thereof the following: “and in the case of stock held by pass-thru entities”.

(d) AMENDMENTS RELATED TO SECTION 621 OF THE REFORM ACT.—

(1)(A) Section 382(e)(2) of the 1986 Code is amended—

(i) by inserting “or other corporate contraction” after “redemption” each place it appears, and

(ii) by inserting “OR OTHER CORPORATE CONTRACTION” after “REDEMPTION” in the heading thereof.

(B) Clause (ii) of section 382(h)(3)(A) of the 1986 Code is amended—

(i) by inserting “or other corporate contraction” after “redemption” each place it appears, and

(ii) by inserting “OR OTHER CORPORATE CONTRACTIONS” after “REDEMPTIONS” in the heading thereof.

(C) Section 382(m) of the 1986 Code is amended by inserting “and” at the end of paragraph (3), by striking out paragraph (4), and by redesignating paragraph (5) as paragraph (4).

(D) The amendments made by this paragraph shall apply with respect to ownership changes after June 10, 1987.

(2) Section 382(g)(4)(C) of the 1986 Code is amended by inserting “rules similar to” before “the rules”.

(3)(A) Section 382(h)(1)(C) of the 1986 Code is amended to read as follows:

“(C) SPECIAL RULES FOR CERTAIN SECTION 338 GAINS.—If an election under section 338 is made in connection with an ownership change and the net unrealized built-in gain is zero by reason of paragraph (3)(B), then, with respect to such change, the section 382 limitation for the post-change year in which gain is recognized by reason of such election shall be increased by the lesser of—

“(i) the recognized built-in gains by reason of such election, or

“(ii) the net unrealized built-in gain (determined without regard to paragraph (3)(B)).”

(B) Paragraph (5) of section 382(h) of the 1986 Code is amended by striking out “recognized built-in gains and losses” and inserting in lieu thereof “recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as pre-change losses)”.

(4) Section 382(i)(3) of the 1986 Code is amended—

(A) by inserting “the earlier of” before “the 1st day”, and

(B) by inserting “or the taxable year in which the transaction being tested occurs” after “1st post-change year”.

(5)(A) Section 382(k)(1) of the 1986 Code is amended by inserting “or having a net operating loss for the taxable year in which the ownership change occurs” after “carryover”.

(B) Section 382(k)(2) of the 1986 Code is amended to read as follows:

“(2) OLD LOSS CORPORATION.—The term ‘old loss corporation’ means any corporation—

“(A) with respect to which there is an ownership change, and

“(B) which (before the ownership change) was a loss corporation.”

(6) Section 382(l)(3)(A) of the 1986 Code is amended by striking out “and” at the end of clause (iii), and by striking out clause (iv) and inserting in lieu thereof the following new clauses:

“(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

“(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account—

“(I) in the case of attribution from a corporation, stock which is not treated as stock for purposes of this section, or

“(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I).”

(7) Clause (ii) of section 382(l)(5)(A) of the 1986 Code is amended by striking out “immediately after such ownership change” and inserting in lieu thereof “after such ownership change and as a result of being shareholders or creditors immediately before such change”.

(8) Section 382(l)(5)(F) of the 1986 Code is amended—

(A) by inserting “‘1504(a)(2)(B)’ for ‘1504(a)(2)’ and” after “substituting” in clause (i)(I), and

(B) by striking out “deposits described in subclause (II)” in clause (ii)(III) and inserting in lieu thereof “the amount of deposits in the new loss corporation immediately after the change”.

(9) Paragraph (6) of section 382(l) of the 1986 Code is amended by striking out “shall be the value of the new loss corporation immediately after the ownership change” and inserting in lieu thereof “shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors’ claims in the transaction”.

(10) Section 382(l) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(8) PREDECESSOR AND SUCCESSOR ENTITIES.—Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity.”

(11) Paragraph (1) of section 621(f) of the Reform Act is amended to read as follows:

26 USC 382 note.

“(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), and (c).—

“(A) IN GENERAL.—

“(i) CHANGES AFTER 1986.—The amendments made by subsections (a), (b), and (c) shall apply to any ownership change after December 31, 1986.

“(ii) PLANS OF REORGANIZATION ADOPTED BEFORE 1987.—For purposes of clause (i), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

“(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

“(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a) and the amendments made by section 806 of the Tax Reform Act of 1976) shall not apply to any increase in percentage points occurring after December 31, 1988, and

“(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring pursuant to a plan of reorganization adopted after December 31, 1986.

In no event shall sections 382 (a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

“(C) COORDINATION WITH SECTION 382 (i).—For purposes of section 382(i) of the Internal Revenue Code of 1986 (as added by this section), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.”

(12)(A) Section 621(f)(2)(C) of the Reform Act is amended by inserting “and reincorporated in Delaware in 1987,” after “1924,”.

(B) Clause (ii) of section 621(f)(2)(C) of the Reform Act is amended to read as follows:

“(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating

to qualified workouts) shall apply to such debt restructuring.”

26 USC 382 note.

(13) Subparagraph (D) of section 621(f)(2) of the Reform Act is amended—

(A) by striking out “or reorganization”, and

(B) by adding at the end thereof the following new sentence: “For purposes of the preceding sentence, in applying section 382 (as so in effect), if a person has a warrant to acquire stock, such stock shall be considered as owned by such person.”

(14) Section 621(f)(3) of the Reform Act is amended by striking out “after December 31, 1986”.

(15) Paragraph (4) of section 621(f) of the Reform Act is amended by striking out the last sentence and inserting in lieu thereof the following:

“Any regulations prescribed under section 382 of the Internal Revenue Code of 1986 (as added by subsection (a)) which have the effect of treating a group of shareholders as a separate 5-percent shareholder by reason of a public offering shall not apply to any public offering before January 1, 1989, for the benefit of institutions described in section 591 of such Code. Unless the corporation otherwise elects, an underwriter of any offering of stock in a corporation before September 19, 1986 (January 1, 1989, in the case of an offering for the benefit of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offering (but in no event later than 60 days after the initial offering).”

(16) Subparagraph (A) of section 621(f)(7) of the Reform Act is amended by striking out “the parent corporation referred to in section 203(d)(13)(B)” and inserting in lieu thereof “a parent corporation incorporated in March 1980 under the laws of Delaware”.

(17)(A) Subsection (e) of section 382 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) TREATMENT OF FOREIGN CORPORATIONS.—Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States.”

26 USC 382 note.

(B) The amendment made by subparagraph (A) shall apply to any ownership change after June 10, 1987. For purposes of the preceding sentence, any equity structure shift pursuant to a plan of reorganization adopted on or before June 10, 1987, shall be treated as occurring when such plan was adopted.

(18) Subparagraph (C) of section 382(l)(5) of the 1986 Code is amended to read as follows:

“(C) REDUCTION OF TAX ATTRIBUTES WHERE DISCHARGE OF INDEBTEDNESS.—

“(i) IN GENERAL.—In any case to which subparagraph (A) applies, 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been applied to reduce tax attributes under section 108(b) shall be so applied.

“(ii) **CLARIFICATION WITH SUBPARAGRAPH (B).**—In applying clause (i), there shall not be taken into account any indebtedness for interest described in subparagraph (B).”

(19) Subparagraph (E) of section 382(l)(5) of the 1986 Code is amended by striking out so much of such subparagraph as recedes clause (i) thereof and inserting in lieu thereof the following:

“(E) **ONLY CERTAIN STOCK TAKEN INTO ACCOUNT.**—For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is transferred in satisfaction of indebtedness and only if such indebtedness—”

(20) Paragraph (4) of section 382(h) of the 1986 Code is amended—

(A) by inserting before the comma at the end of subparagraph (A) the following: “(or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses)”, and

(B) by striking out “TREATED AS A NET OPERATING LOSS” in the paragraph heading and inserting in lieu thereof “ALLOWED AS A CARRYFORWARD”.

(21) Paragraph (1) of section 382(g) of the 1986 Code is amended—

(A) by striking out “new loss corporation” and inserting in lieu thereof “loss corporation”, and

(B) by striking out “old loss corporation” and inserting in lieu thereof “loss corporation”.

(22) Paragraph (6) of section 382(h) of the 1986 Code is amended to read as follows:

“(6) **TREATMENT OF CERTAIN BUILT-IN ITEMS.**—

“(A) **INCOME ITEMS.**—Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

“(B) **DEDUCTION ITEMS.**—Any amount which is allowable as a deduction during the recognition period but which is attributable to periods before the change date shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

“(C) **ADJUSTMENTS.**—The amount of the net unrealized built-in gain or loss shall be properly adjusted for amounts treated as recognized built-in gains or losses under this paragraph.”

(23) Paragraph (9) of section 382(h) of the 1986 Code is amended by striking out “is transferred” and inserting in lieu thereof “was acquired (or is subsequently transferred)”.

(24) Subsection (m) of section 382 of the 1986 Code (as amended by paragraph (1)) is amended by striking out “and” at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof “, and”, and by adding at the end thereof the following:

“(5) providing, in the case of any group of corporations described in section 1563(a) (determined by substituting ‘50 percent’ for ‘80 percent’ each place it appears and determined

without regard to paragraph (4) thereof), appropriate adjustments to value, built-in gain or loss, and other items so that items are not omitted or taken into account more than once.”

(25) Clause (ii) of section 382(l)(5)(A) of the 1986 Code is amended by striking out “stock of controlling corporation” and inserting in lieu thereof “stock of a controlling corporation”.

(26) Clause (ii) of section 382(h)(3)(B) of the 1986 Code is amended by striking out “there shall not” and inserting in lieu thereof “except as provided in regulations, there shall not”.

(27) Subparagraph (B) of section 382(l)(5) of the 1986 Code is amended by striking out “the net operating loss deduction under section 172(a) for any post-change year shall be determined” and inserting in lieu thereof “the pre-change losses and excess credits (within the meaning of section 383(a)(2)) which may be carried to a post-change year shall be computed”.

(28)(A) Clause (ii) of section 382(h)(3)(A) of the 1986 Code is amended by striking out “determinations under clause (i)” and inserting in lieu thereof “to the extent provided in regulations, determinations under clause (i)”.

(B) The amendment made by subparagraph (A) shall apply in the case of ownership changes on or after June 21, 1988.

(29) Subclause (I) of section 382(l)(5)(F)(iii) of the 1986 Code is amended by striking out “section 368(a)(D)(ii)” and inserting in lieu thereof “section 368(a)(3)(D)(ii)”.

(e) AMENDMENTS RELATED TO SECTION 631 OF THE REFORM ACT.—

(1) Clause (ii) of section 336(d)(2)(B) of the 1986 Code is amended to read as follows:

“(ii) CERTAIN ACQUISITIONS TREATED AS PART OF PLAN.—For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidated corporation after the date 2 years before the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as acquired as part of a plan described in clause (i)(II).”

(2) Paragraph (3) of section 336(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: “The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution.”

(3) Subsection (e) of section 336 of the 1986 Code is amended by striking out “such corporation may elect” and inserting in lieu thereof “an election may be made”.

(4) Subparagraph (B) of section 337(b)(2) of the 1986 Code is amended—

(A) by striking out “or 511(b)(2)” in clause (i),

(B) by striking out “in an unrelated trade or business (as defined in section 513)” in clause (i) and inserting in lieu thereof “in an activity the income from which is subject to tax under section 511(a)”, and

(C) by striking out “an unrelated trade or business of such organization” in clause (ii) and inserting in lieu thereof “an activity referred to in clause (i)”.

(5)(A) Subsection (d) of section 337 of the 1986 Code is amended—

(i) by striking out “made to this subpart by the Tax Reform Act of 1986” and inserting in lieu thereof “made by subtitle D of title VI of the Tax Reform Act of 1986”, and

- (ii) by inserting "or through the use of a regulated investment company, real estate investment trust, or tax-exempt entity" after "subchapter)" in paragraph (1).
- (B) The amendment made by subparagraph (A)(ii) shall not apply to any reorganization if before June 10, 1987—
- (i) the board of directors of a party to the reorganization adopted a resolution to solicit shareholder approval for the transaction, or
- (ii) the shareholders or the board of directors of a party to the reorganization approved the transaction.
- (6) Subsection (b) of section 334 of the 1986 Code is amended to read as follows:

LIQUIDATION OF SUBSIDIARY.—

"(1) **IN GENERAL.**—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332(a) applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.

"(2) **CORPORATE DIBUTEE.**—For purposes of this subsection, the term 'corporate distributee' means only the corporation which meets the stock ownership requirements specified in section 332(b)."

(7)(A) Subparagraph (B) of section 453(h)(1) of the 1986 Code is amended by striking out "to one person" and inserting in lieu thereof "to 1 person in 1 transaction".

(B) Subparagraph (E) of section 453(h)(1) of the 1986 Code is amended by striking out "section 368(c)(1)" and inserting in lieu thereof "section 368(c)".

(8)(A) Part VII of subchapter C of chapter 1 of the 1986 Code is hereby repealed.

(B) Subsection (b) of section 311 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) **SPECIAL RULE FOR CERTAIN DISTRIBUTIONS OF PARTNERSHIP AND TRUST INTERESTS.**—If the property distributed consists of an interest in a partnership or trust, the Secretary may by regulations provide that the amount of the gain recognized under paragraph (1) shall be computed without regard to any loss attributable to property contributed to the partnership or trust for the principal purpose of recognizing such loss on the distribution."

(C) The table of parts for subchapter C of chapter 1 of the 1986 Code is amended by striking out the item relating to part VII.

(9) Paragraph (1) of section 267(a) of the 1986 Code is amended—

(A) by striking out "(other than a loss in case of a distribution in corporate liquidation)", and

(B) by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation."

(10) Paragraph (1) of section 301(b) of the 1986 Code is amended to read as follows:

“(1) GENERAL RULE.—For purposes of this section, the amount of any distribution shall be the amount of money received, plus the fair market value of the other property received.”

(11) Subsection (d) of section 301 of the 1986 Code is amended to read as follows:

“(d) BASIS.—The basis of property received in a distribution to which subsection (a) applies shall be the fair market value of such property.”

(12) Section 301 of the 1986 Code is amended by striking out subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(13)(A) Subsection (a) of section 367 of the 1986 Code is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

“(5) PARAGRAPHS (2) AND (3) NOT TO APPLY TO CERTAIN SECTION 361 TRANSACTIONS.—Paragraphs (2) and (3) shall not apply in the case of an exchange described in section 361. Subject to such basis adjustments and such other conditions as shall be provided in regulations, the preceding sentence shall not apply if the transferor corporation is controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations. For purposes of the preceding sentence, all members of the same affiliated group (within the meaning of section 1504) shall be treated as 1 corporation.”

26 USC 367 note.

(B) The amendment made by subparagraph (A) shall apply to exchanges on or after June 21, 1988, except that such amendment shall not apply to any exchange pursuant to any reorganization for which a plan of reorganization was adopted before June 21, 1988.

(C) Section 367(e)(2) of the 1986 Code (as amended by the Reform Act) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which has an income tax treaty with the United States.

(14)(A) Subsection (d) of section 1248 of the 1986 Code is amended by striking out paragraph (2).

(B) Subparagraph (B) of section 1248(f)(1) of the 1986 Code is amended to read as follows:

“(B) such domestic corporation distributes stock of such foreign corporation in a distribution to which section 311(a), 337, or 361(c)(1) applies.”

(C) Paragraph (1) of section 1248(f) of the 1986 Code is amended by striking out “distribution, sale, or exchange” in the last sentence and inserting in lieu thereof “distribution”.

(D) Subsection (f) of section 1248 of the 1986 Code is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(E) The subsection heading for section 1248(f) of the 1986 Code is amended by striking out “SECTION 311, 336, OR 337 TRANSACTIONS” and inserting in lieu thereof “NONRECOGNITION TRANSACTIONS”.

(15) Paragraph (1) of section 995(c) of the 1986 Code is amended by inserting “or” at the end of subparagraph (A), by striking out “, or” at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C) and the sentence following subparagraph (C).

(16) Subsection (d) of section 245 of the 1986 Code is hereby repealed.

(17) Paragraph (14) of section 1223 of the 1986 Code is amended to read as follows:

“(14) CROSS REFERENCE.—

“For special holding period provision relating to certain partnership distributions, see section 735(b).”

(18) Clause (ii) of section 341(e)(1)(C) of the 1986 Code is amended—

(A) by striking out “sale or exchange” the first place it appears and inserting in lieu thereof “liquidating sale or exchange”, and

(B) by striking out “, gain or loss on which was not recognized to such other corporation under section 337(a).”.

(19) Subsection (l) of section 897 of the 1986 Code is hereby repealed.

(20) Paragraph (7) of section 338(h) of the 1986 Code is hereby repealed.

(21)(A) The heading of subsection (b) of section 336 of the 1986 Code is amended by striking out “IN EXCESS OF BASIS”.

(B) The heading of paragraph (2) of section 311(b) of the 1986 Code is amended by striking out “IN EXCESS OF BASIS”.

(22) Section 453B of the 1986 Code is amended by adding at the end thereof the following new subsection:

h) CERTAIN LIQUIDATING DISTRIBUTIONS BY S CORPORATIONS.—

“(1) an installment obligation is distributed by an S corporation in a complete liquidation, and

“(2) receipt of the obligation is not treated as payment for the stock by reason of section 453(h)(1),

and, except for purposes of any tax imposed by subchapter S, no gain or loss with respect to the distribution of the obligation shall be recognized by the distributing corporation. Under regulations prescribed by the Secretary, the character of the gain or loss to the shareholder shall be determined in accordance with the principles of section 1366(b).”

AMENDMENTS RELATED TO SECTION 632 OF THE REFORM ACT.—

(1) Subsection (a) of section 1374 of the 1986 Code is amended by striking out “a recognized built-in gain” and inserting in lieu thereof “a net recognized built-in gain”.

(2) Subsection (b) of section 1374 of the 1986 Code is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

“(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be computed by applying the highest rate of tax specified in section 11(b) to the net recognized built-in gain of the S corporation for the taxable year.

“(2) NET OPERATING LOSS CARRYFORWARDS FROM C YEARS ALLOWED.—Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed for purposes of this section as a deduction against the net recognized built-in gain of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, the amount of the net recognized built-in gain shall be treated as taxable income. Rules similar to

the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation."

(3) Subparagraph (B) of section 1374(b)(4) of the 1986 Code is amended to read as follows:

"(B) the amount of the net recognized built-in gain shall be treated as the taxable income."

(4) Paragraph (2) of section 1374(c) of the 1986 Code is amended by striking out "recognized built-in gains" each place it appears and inserting in lieu thereof "net recognized built-in gain".

(5)(A) Section 1374 of the 1986 Code is amended by striking out all that follows paragraph (1) of subsection (d) and inserting in lieu thereof the following:

"(2) NET RECOGNIZED BUILT-IN GAIN.—

"(A) IN GENERAL.—The term 'net recognized built-in gain' means, with respect to any taxable year in the recognition period, the lesser of—

"(i) the amount which would be the taxable income of the S corporation for such taxable year if (except as provided in subsection (b)(2)) only recognized built-in gains and recognized built-in losses were taken into account, or

"(ii) such corporation's taxable income for such taxable year (determined as provided in section 1375(b)(1)(B)).

"(B) CARRYOVER.—If, for any taxable year, the amount referred to in clause (i) of subparagraph (A) exceeds the amount referred to in clause (ii) of subparagraph (A), such excess shall be treated as a recognized built-in gain in the succeeding taxable year. The preceding sentence shall apply only in the case of a corporation treated as an S corporation by reason of an election made on or after March 31, 1988.

"(3) RECOGNIZED BUILT-IN GAIN.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset except to the extent that the S corporation establishes that—

"(A) such asset was not held by the S corporation as of the beginning of the 1st taxable year for which it was an S corporation, or

"(B) such gain exceeds the excess (if any) of—

"(i) the fair market value of such asset as of the beginning of such 1st taxable year, over

"(ii) the adjusted basis of the asset as of such time.

"(4) RECOGNIZED BUILT-IN LOSSES.—The term 'recognized built-in loss' means any loss recognized during the recognition period on the disposition of any asset to the extent that the S corporation establishes that—

"(A) such asset was held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3), and

"(B) such loss does not exceed the excess of—

"(i) the adjusted basis of such asset as of the beginning of such 1st taxable year, over

"(ii) the fair market value of such asset as of such time.

“(5) TREATMENT OF CERTAIN BUILT-IN ITEMS.—

“(A) INCOME ITEMS.—Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the 1st taxable year for which the corporation was an S corporation shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

“(B) DEDUCTION ITEMS.—Any amount which is allowable as a deduction during the recognition period but which is attributable to periods before the 1st taxable year referred to in subparagraph (A) shall be treated as a recognized built-in loss for the taxable year for which it is allowable as a deduction.

“(C) ADJUSTMENT TO NET UNREALIZED BUILT-IN GAIN.—The amount of the net unrealized built-in gain shall be properly adjusted for amounts treated as recognized built-in gains or losses under this paragraph.

“(6) TREATMENT OF CERTAIN PROPERTY.—If the adjusted basis of any asset is determined (in whole or in part) by reference to the adjusted basis of any other asset held by the S corporation at the beginning of the 1st taxable year referred to in paragraph (3)—

“(A) such asset shall be treated as held by the S corporation as of the beginning of such 1st taxable year, and

“(B) any determination under paragraph (3)(B) or (4)(B) with respect to such asset shall be made by reference to the fair market value and adjusted basis of such other asset as of the beginning of such 1st taxable year.

“(7) RECOGNITION PERIOD.—The term ‘recognition period’ means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

“(8) TREATMENT OF TRANSFER OF ASSETS FROM C CORPORATION TO S CORPORATION.—

“(A) IN GENERAL.—Except to the extent provided in regulations, if—

“(i) an S corporation acquires any asset, and

“(ii) the S corporation’s basis in such asset is determined (in whole or in part) by reference to the basis of such asset (or any other property) in the hands of a C corporation,

then a tax is hereby imposed on any net recognized built-in gain attributable to any such assets for any taxable year beginning in the recognition period. The amount of such tax shall be determined under the rules of this section as modified by subparagraph (B).

“(B) MODIFICATIONS.—For purposes of this paragraph, the modifications of this subparagraph are as follows:

“(i) IN GENERAL.—The preceding paragraphs of this subsection shall be applied by taking into account the day on which the assets were acquired by the S corporation in lieu of the beginning of the 1st taxable year for which the corporation was an S corporation.

“(ii) SUBSECTION (c) (1) NOT TO APPLY.—Subsection (c)(1) shall not apply.

“(9) REFERENCE TO 1ST TAXABLE YEAR.—Any reference in this section to the 1st taxable year for which the corporation was an S corporation shall be treated as a reference to the 1st taxable

year for which the corporation was an S corporation pursuant to its most recent election under section 1362.

“(e) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section including regulations providing for the appropriate treatment of successor corporations.”

(B) Subparagraph (B) of section 1375(b)(1) of the 1986 Code is amended to read as follows:

“(B) **LIMITATION.**—The amount of the excess net passive income for any taxable year shall not exceed the amount of the corporation’s taxable income for such taxable year as determined under section 63(a)—

“(i) without regard to the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures), and

“(ii) without regard to the deduction under section 172.”

(C) Subsection (b) of section 1375 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) **COORDINATION WITH SECTION 1374.**—Notwithstanding paragraph (3), the amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374.”

(D) Subsection (c) of section 1375 of the 1986 Code is amended to read as follows:

“(c) **CREDITS NOT ALLOWABLE.**—No credit shall be allowed under part IV of subchapter A of this chapter (other than section 34) against the tax imposed by subsection (a).”

(E) Paragraph (2) of section 1366(f) of the 1986 Code is amended by striking out “as defined in section 1374(d)(2)” and inserting in lieu thereof “within the meaning of section 1374”.

(6) Paragraph (3) of section 1362(d) of the 1986 Code is amended—

(A) by striking out clause (v) of subparagraph (D), and

(B) by adding at the end thereof the following new subparagraph:

“(E) **SPECIAL RULE FOR OPTIONS AND COMMODITY DEALINGS.**—

“(i) **IN GENERAL.**—In the case of any options dealer or commodities dealer, passive investment income shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer’s activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

“(ii) **DEFINITIONS.**—For purposes of this subparagraph—

“(I) **OPTIONS DEALER.**—The term ‘options dealer’ has the meaning given such term by section 1256(g)(8).

“(II) **COMMODITIES DEALER.**—The term ‘commodities dealer’ means a person who is actively engaged in trading section 1256 contracts and is

registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

“(III) SECTION 1256 CONTRACT.—The term ‘section 1256 contract’ has the meaning given to such term by section 1256(b).”

(7) The subsection (d) of section 1363 of the 1986 Code which relates to distributions of appreciated property, and subsection (e) of section 1363 of the 1986 Code, are hereby repealed.

AMENDMENTS RELATED TO SECTION 633 OF THE REFORM ACT.—

(1) Subsection (b) of section 633 of the Reform Act is amended to read as follows:

26 USC 336 note.

(b) BUILT-IN GAINS OF S CORPORATIONS.—

“(1) IN GENERAL.—The amendments made by section 632 (other than subsection (b) thereof) shall apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986.

“(2) APPLICATION OF PRIOR LAW.—In the case of any taxable year of an S corporation which begins after December 31, 1986, and to which the amendments made by section 632 (other than subsection (b) thereof) do not apply, paragraph (1) of section 1374(b) of the Internal Revenue Code of 1954 (as in effect on the date before the date of the enactment of this Act) shall be applied as if it read as follows:

“(1) an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds \$25,000, or”.

(2) Subparagraph (B) of section 633(c)(1) of the Reform Act is amended by striking out “50 percent or more” and inserting in lieu thereof “more than 50 percent”.

(3) Paragraph (1) of section 633(d) of the Reform Act is amended—

(A) by striking out “this section” and inserting in lieu thereof “this subtitle”;

(B) by striking out “would be recognized and inserting in lieu thereof “would be recognized by the liquidating corporation”, and

(C) by adding at the end thereof the following new sentence: “Section 333 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) shall continue to apply to any complete liquidation described in the preceding sentence.”.

(4) Subparagraph (C) of section 633(d)(2) of the Reform Act is amended to read as follows:

“(C) any gain on an asset acquired by the qualified corporation if—

“(i) the basis of such asset in the hands of the qualified corporation is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom acquired, and

“(ii) a principal purpose for the transfer of such asset to the qualified corporation was to secure the benefits of this subsection.”

(5)(A) Subparagraph (A) of section 633(d)(5) of the Reform Act is amended by striking out “10 or fewer qualified persons” and inserting in lieu thereof “a qualified group”.

26 USC 336 note.

(B) Paragraph (6) of section 633(d) of the Reform Act is amended to read as follows:

“(6) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) QUALIFIED GROUP.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘qualified group’ means any group of 10 or fewer qualified persons who at all times during the 5-year period ending on the date of the adoption of the plan of complete liquidation (or, if shorter, the period during which the corporation or any predecessor was in existence) owned (or was treated as owning under the rules of subparagraph (C)) more than 50 percent (by value) of the stock in such corporation.

“(ii) 5-YEAR OWNERSHIP REQUIREMENT NOT TO APPLY IN CERTAIN CASES.—In the case of—

“(I) any complete liquidation pursuant to a plan of liquidation adopted before March 31, 1988,

“(II) any distribution not in liquidation made before March 31, 1988,

“(III) an election to be an S corporation filed before March 31, 1988, or

“(IV) a transaction described in section 338 of the Internal Revenue Code of 1986 where the acquisition date (within the meaning of such section 338) is before March 31, 1988,

the term ‘qualified group’ means any group of 10 or fewer qualified persons.

“(B) QUALIFIED PERSON.—The term ‘qualified person’ means—

“(i) an individual,

“(ii) an estate, or

“(iii) any trust described in clause (ii) or clause (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

“(C) ATTRIBUTION RULES.—

“(i) IN GENERAL.—Any stock owned by a corporation, trust (other than a trust referred to in subparagraph (B)(iii)), or partnership shall be treated as owned proportionately by its shareholders, beneficiaries, or partners and shall not be treated as owned by such corporation, trust, or partnership. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

“(ii) FAMILY MEMBERS.—Stock owned (or treated as owned) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person, and shall be treated as owned by such 1 person for any period during which it was owned (or treated as owned) by any such member.

“(iii) TREATMENT OF CERTAIN TRUSTS.—Stock owned (or treated as owned) by the estate of any decedent or by any trust referred to in subparagraph (B)(iii) with respect to such decedent shall be treated as owned by such person and shall be treated as owned by such 1 person

for the period during which it was owned (or treated as owned) by such estate or any such trust or by the decedent.

“(D) SPECIAL HOLDING PERIOD RULES.—Any property acquired by reason of the death of an individual shall be treated as owned at all times during which such property was owned (or treated as owned) by the decedent.

Real property.

“(E) CONTROLLED GROUP OF CORPORATIONS.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of determining whether any of such corporations met the requirement of paragraph (5)(B) and for purposes of determining the applicable percentage with respect to any of such corporations. For purposes of the preceding sentence, an S corporation shall not be treated as a member of a controlled group unless such corporation was a C corporation for its taxable year which includes August 1, 1986, or it was not described for such taxable year in paragraph (1) or (2) of section 1374(c) of such Code (as in effect on the day before the date of the enactment of this Act).”

(6) Subsection (d) of section 633 of the Reform Act is amended adding at the end thereof the following new paragraph:

26 USC 336 note.

“(9) APPLICATION TO NONLIQUIDATING DISTRIBUTIONS.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989, without regard to whether such corporation is completely liquidated.”

(7) Paragraph (8) of the section 633(d) of the Reform Act is amended by striking out “becomes an S corporation for a taxable year beginning before January 1, 1989” and inserting in lieu thereof “makes an election to be an S corporation under section 1362 of such Code before January 1, 1989, without regard to whether such corporation is completely liquidated”.

(8) Section 633 of the Reform Act is amended by redesignating the subsections following the first subsection (d) as subsections (f), (g), and (h), respectively.

(9) Subsection (f)(2) of section 633 of the Reform Act (as so designated) is amended by striking out “May 9, 1929” and inserting in lieu thereof “May 9, 1929 (or any direct or indirect subsidiary of such corporation)”.

(10) Paragraph (3) of section 633(f) of the Reform Act (as so designated) is amended by striking out “of such Code” in the first sentence thereof and inserting in lieu thereof “of such Code”.

(11) Subclause (I) of section 633(f)(4)(A)(i) of the Reform Act (as redesignated) is amended by striking out “binding on the selling corporation to sell substantially all its assets” and inserting in lieu thereof “to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976,”.

Massachusetts.

(12) Subparagraph (A) of section 633(f)(5) of the Reform Act (as redesignated) is amended to read as follows:

“(A) a voting trust established not later than December 31, 1987, shall qualify as a trust permitted as a shareholder of an S corporation and shall be treated as only 1 shareholder if the holders of beneficial interests in such voting trust are—

“(i) employees or retirees of such corporation, or
 “(ii) in the case of stock or voting trust certificates acquired from an employee or retiree of such corporation, the spouse, child, or estate of such employee or retiree or a trust created by such employee or retiree which is described in section 1361(c)(2) of the Internal Revenue Code of 1986 (or treated as described in such section by reason of section 1361(d) of such Code), and”.

(h) AMENDMENTS RELATED TO SECTION 641 OF THE REFORM ACT.—

(1) Paragraph (3) of section 1060(b) of the 1986 Code is amended by striking out “the Secretary may find necessary” and inserting in lieu thereof “the Secretary deems necessary”.

(2) Section 1060 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(d) TREATMENT OF CERTAIN PARTNERSHIP TRANSACTIONS.—In the case of a distribution of partnership property or a transfer of an interest in a partnership—

“(1) the rules of subsection (a) shall apply but only for purposes of determining the value of goodwill or going concern value (or similar items) for purposes of applying section 755, and

“(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).”

(3)(A) Subparagraph (B) of section 6724(d)(1) of the 1986 Code (defining information return) is amended by striking out “or” at the end of clause (ix), by striking out the period at the end of clause (x) and inserting in lieu thereof “, or”, and by adding at the end thereof the following new clause:

“(xi) section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions).”

(B) Section 1060 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(e) CROSS REFERENCE.—

“For provisions relating to penalties for failure to file a return required by this section, see section 6721.”

(i) AMENDMENTS RELATED TO SECTION 642 OF THE REFORM ACT.—

(1) Paragraph (1) of section 453(g) of the 1986 Code is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

“(A) subsection (a) shall not apply,

“(B) for purposes of this title—

“(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

“(ii) in the case of any payments which are contingent as to the amount but with respect to which the fair market value may not be reasonably ascertained, the basis shall be recovered ratably, and

“(C) the purchaser may not increase the basis of any property acquired in such sale by any amount before the time such amount is includible in the gross income of the seller.”

(2)(A) Section 453(g) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) **RELATED PERSONS.**—For purposes of this subsection, the term ‘related persons’ has the meaning given to such term by section 1239(b), except that such term shall include 2 or more partnerships having a relationship to each other described in section 707(b)(1)(B).”

(B) Section 453(g)(1) of the 1986 Code is amended by striking out “(within the meaning of section 1239(b))”.

(3) The heading of paragraph (2) of section 642(c) of the Reform Act is amended by striking out “TRADITIONAL” and inserting in lieu thereof “TRANSITIONAL”.

(j) **AMENDMENTS RELATED TO SECTION 643 OF THE REFORM ACT.**—

(1)(A) Subsection (e) of section 171 of the 1986 Code is amended to read as follows:

“(e) **TREATMENT AS OFFSET TO INTEREST PAYMENTS.**—Except as provided in regulations, in the case of any taxable bond—

“(1) the amount of any bond premium shall be allocated among the interest payments on the bond under rules similar to the rules of subsection (b)(3), and

“(2) in lieu of any deduction under subsection (a), the amount of any premium so allocated to any interest payment shall be applied against (and operate to reduce) the amount of such interest payment.

For purposes of the preceding sentence, the term ‘taxable bond’ means any bond the interest of which is not excludable from gross income.”

(B) Paragraph (5) of section 1016(a) of the 1986 Code is amended by striking out “allowable pursuant to section 171(a)(1)” and inserting in lieu thereof “allowable pursuant to section 171(a)(1) (or the amount applied to reduce interest payments under section 171(e)(2))”.

(C) The amendments made by this paragraph shall apply in the case of obligations acquired after December 31, 1987; except that the taxpayer may elect to have such amendment apply to obligations acquired after October 22, 1986.

(2) Paragraph (2) of section 643(b) of the Reform Act is amended by striking out “issued after” and inserting in lieu thereof “acquired after”.

26 USC 171 note.

26 USC 171 note.

(k) **AMENDMENTS RELATED TO SECTION 646 OF THE REFORM ACT.**—

(1) Paragraph (2) of section 646(b) of the Reform Act is amended to read as follows:

“(2) such entity is exclusively engaged in the leasing of mineral property and activities incidental thereto, and”.

(2) Paragraph (3) of section 646(b) of the Reform Act is amended by inserting “as of October 22, 1986,” after “publicly traded”.

(3) Subparagraph (A) of section 646(c)(1) of the Reform Act is amended by inserting “before January 1, 1991” after “entity”.

(4) Paragraph (2) of section 646(c) of the Reform Act is amended to read as follows:

“(2) **AGREEMENT.**—

“(A) **IN GENERAL.**—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not acquire any additional property other than property described in subparagraph (B).

“(B) **PERMISSIBLE ACQUISITIONS.**—Property is described in this paragraph if it is—

26 USC 671 note.

Minerals and mining.

Real property.
Minerals
and mining.

“(i) surface rights to property the acquisition of which—

“(I) is necessary to mine mineral rights held on October 22, 1986, and

“(II) is required by a written binding agreement between the entity and an unrelated person entered into on or before October 22, 1986,

“(ii) surface rights to property which are not described in clause (i) and which—

“(I) are acquired in an exchange to which section 1031 applies, and

“(II) are necessary to mine mineral rights held on October 22, 1986,

“(iii) tangible personal property incidental to the leasing of mineral property and activities incidental thereto, or

“(iv) part of any required reserves of the entity.”

Gifts and
property.

26 USC 671 note.

(5) Paragraph (1) of section 646(d) of the Reform Act is amended by striking out subparagraph (B) and inserting in lieu thereof:

“(B) for purposes of section 333 of such Code (as so in effect)—

“(i) any person holding an income interest in such entity as of such time shall be treated as a qualified electing shareholder, and

“(ii) the earnings and profits, and the value of money or stock or securities, of such entity shall be apportioned ratably among persons described in clause (i).

The amendments made by subtitle D of this title and section 1804 of this Act shall not apply to any liquidation under this paragraph.”

(6)(A) Paragraph (2) of section 646(d) of the Reform Act is amended to read as follows:

“(2) TERMINATION OF ELECTION.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), the entity shall, for purposes of the Internal Revenue Code of 1986, be treated as a corporation for the taxable year in which such cessation or violation occurs and for all subsequent taxable years.”

(B) Paragraph (3) of section 646(c) of the Reform Act is amended to read as follows:

“(3) BEGINNING OF PERIOD FOR WHICH ELECTION IS IN EFFECT.—The period during which an election is in effect under this subsection shall begin on the 1st day of the 1st taxable year beginning after the date of the enactment of this Act and following the taxable year in which the election is made.”

(7)(A) Subsection (e) of section 646 of the Reform Act is amended to read as follows:

“(e) SPECIAL RULE FOR PERSONS HOLDING INCOME INTERESTS.—In applying subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 to any entity to which this section applies—

“(1) a reversionary interest shall not be taken into account until it comes into possession, and

“(2) all items of income, gain, loss, deduction, and credit shall be allocated to persons holding income interests for the period of the allocation.”

B) Section 646(d)(3) of the Reform Act is amended by striking "or by reason of subsection (e)". 26 USC 671 note.

AMENDMENTS RELATED TO SECTION 651 OF THE REFORM ACT.—

(1)(A) Paragraph (6) of section 852(b) of the 1986 Code (as amended by section 651(b)(1)(A) of the Reform Act) is redesignated paragraph (7).

(B) Subsection (b) of section 855 of the 1986 Code is amended striking out "section 852(b)(6)" and inserting in lieu thereof "section 852(b)(7)".

(2) Paragraph (2) of section 4982(e) of the 1986 Code is amended to read as follows:

"(2) CAPITAL GAIN NET INCOME.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'capital gain net income' has the meaning given such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year).

"(B) REDUCTION BY NET ORDINARY LOSS FOR CALENDAR YEAR.—The amount determined under subparagraph (A) shall be reduced (but not below the net capital gain) by the amount of the company's net ordinary loss for the calendar year.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) NET CAPITAL GAIN.—The term 'net capital gain' has the meaning given such term by section 1222(11) (determined by treating the 1-year period ending on October 31 of the calendar year as the company's taxable year).

"(ii) NET ORDINARY LOSS.—The net ordinary loss for the calendar year is the amount which would be the net operating loss of the company for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1)."

(3) Paragraph (2) of section 852(c) of the 1986 Code is amended to read as follows:

"(2) COORDINATION WITH TAX ON UNDISTRIBUTED INCOME.—For purposes of applying this chapter to distributions made by a regulated investment company with respect to any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss (or net foreign currency loss) attributable to transactions after October 31 of each year and with such other adjustments as the Secretary may by regulations prescribe. The preceding sentence shall apply—

"(A) only to the extent that the amount distributed by the company with respect to the calendar year does not exceed the required distribution for such calendar year (as determined under section 4982 by substituting '100 percent' for each percentage set forth in section 4982(b)(1)), and

"(B) except as provided in regulations, only if an election under section 4982(e)(4) is not in effect with respect to such company."

(4) Subparagraph (C) of section 852(b)(3) of the 1986 Code is amended—

(A) by striking out "net capital loss" each place it appears in the 3rd sentence and inserting in lieu thereof "net capital loss or net long-term capital loss", and

(B) by striking out "regulated investment company taxable income" in the last sentence and inserting in lieu thereof "the taxable income of the regulated investment company".

(5) Subsection (e) of section 4982 of the 1936 Code is amended by adding at the end thereof the following new paragraph:

"(5) TREATMENT OF FOREIGN CURRENCY GAINS AND LOSSES AFTER OCTOBER 31 OF CALENDAR YEAR.—Any foreign currency gain or loss which is attributable to a section 988 transaction and which is properly taken into account for the portion of the calendar year after October 31 shall not be taken into account in determining the amount of the ordinary income of the regulated investment company for such calendar year but shall be taken into account in determining the ordinary income of the investment company for the following calendar year. In the case of any company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31."

(6) Section 4982 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) EXCEPTION FOR CERTAIN REGULATED INVESTMENT COMPANIES.—This section shall not apply to any regulated investment company for any calendar year if at all times during such calendar year each shareholder in such company was either—

"(1) a trust described in section 401(a) and exempt from tax under section 501(a), or

"(2) a segregated asset account of a life insurance company held in connection with variable contracts (as defined in section 817(d)).

For purposes of the preceding sentence, any shares attributable to an investment in the regulated investment company (not exceeding \$250,000) made in connection with the organization of such company shall not be taken into account."

(7) Subsection (b) of section 852 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) SPECIAL RULE FOR TREATMENT OF CERTAIN FOREIGN CURRENCY LOSSES.—To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net foreign currency loss attributable to transactions after October 31 of such year, and any such net foreign currency loss shall be treated as arising on the 1st day of the following taxable year."

(8) Subsection (a) of section 852 of the 1986 Code is amended by adding at the end thereof the following new sentence:

"The Secretary may waive the requirements of paragraph (1) for any taxable year if the regulated investment company establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4982."

(9) Effective with respect to dividends declared in 1988 and subsequent calendar years, paragraph (7) of section 852(b) of the 1986 Code (as redesignated by paragraph (1)) is amended—

(A) by striking out "in December" and inserting in lieu thereof "in October, November, or December",

(B) by striking out "in such month" and inserting in lieu thereof "in such a month",

(C) by striking out "on such date" in subparagraphs (A) and (B) and inserting in lieu thereof "on December 31 of such calendar year", and

(D) by striking out "before February 1" and inserting in lieu thereof "during January".

(10) Paragraph (1) of section 852(e) of the 1986 Code is amended by striking out "subsection (a)(3)" and inserting in lieu thereof "subsection (a)(2)".

AMENDMENTS RELATED TO SECTION 652 OF THE REFORM ACT.—

(1) Paragraph (1) of section 851(a) of the 1986 Code is amended to read as follows:

"(1) which, at all times during the taxable year—

"(A) is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2) as a management company or unit investment trust, or

"(B) has in effect an election under such Act to be treated as a business development company, or".

(2) Paragraph (1) of section 851(e) of the 1986 Code is amended by striking out "a registered management company or registered business development company" and inserting in lieu thereof "a management company or a business development company described in subsection (a)(1)".

AMENDMENTS RELATED TO SECTION 653 OF THE REFORM ACT.—

(1) Subsection (b) of section 851 of the 1986 Code is amended by adding at the end thereof the following new sentence: "Income derived from a partnership or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust."

(2)(A) Paragraph (3) of section 851(b) of the 1986 Code is amended to read as follows:

"(3) less than 30 percent of its gross income is derived from the sale or disposition of any of the following which was held for less than 3 months:

"(A) stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended),

"(B) options, futures, or forward contracts (other than options, futures, or forward contracts on foreign currencies), or

"(C) foreign currencies (or options, futures, or forward contracts on foreign currencies) but only if such currencies (or options, futures, or forward contracts) are not directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stocks or securities), and".

(B) Subsection (b) of section 851 of the 1986 Code is amended by striking out "which are not ancillary" in the material following paragraph (4), and inserting in lieu thereof "which are not directly related".

(C) Subparagraph (C) of section 851(b)(3) of the 1986 Code (as amended by subparagraph (A)), and the amendment made by

26 USC 851 note.

subparagraph (B), shall apply to taxable years beginning after the date of the enactment of this Act.

(4) Clause (i) of section 851(g)(2)(A) of the 1986 Code (defining designated hedge) is amended by striking out "contractual option" and inserting in lieu thereof "contractual obligation"

(5) Subsection (b) of section 851 of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation."

(o) AMENDMENTS RELATED TO SECTION 654 OF THE REFORM ACT.—Subsection (q) of section 851 of the 1986 Code (as added by section 654 of the Reform Act)—

(1) is redesignated as subsection (h), and

(2) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR ABNORMAL REDEMPTIONS.—

"(A) IN GENERAL.—Any fund treated as a separate corporation under paragraph (1) shall not be disqualified under subsection (b)(3) for any taxable year by reason of sales resulting from abnormal redemptions on any day and occurring before the close of the 5th business day after such day if—

"(i) the sum of the percentages determined under subparagraph (B) for the abnormal redemptions on such day and for abnormal redemptions on prior days during such taxable year exceeds 30 percent; and

"(ii) the regulated investment company of which such fund is a part would meet the requirements of subsection (b)(3) for such taxable year if all the funds which are part of such company were treated as a single company.

"(B) ABNORMAL REDEMPTIONS.—For purposes of subparagraph (A), the term 'abnormal redemptions' means redemptions occurring on any day if the net redemptions on such day exceed 1 percent of the fund's net asset value.

"(C) DETERMINATION OF NET ASSET VALUE.—For purposes of this paragraph, net asset value for any day shall be determined as of the close of the preceding day.

"(D) LIMITATION.—For purposes of subparagraph (A), any sale or other disposition of stock or securities held less than 3 months occurring during any day shall be deemed to result from abnormal redemptions until the cumulative proceeds from such sales or dispositions occurring during such day, plus the cumulative net positive cash flow of the fund for preceding business days (if any) following the day with abnormal redemptions, exceed the amount of net redemptions on the day with abnormal redemptions."

(p) AMENDMENTS RELATED TO SECTION 662 OF THE REFORM ACT.—

(1) Subclause (I) of section 856(c)(6)(D)(i) of the 1986 Code (as added by section 662 of the Reform Act) is amended by striking out "debt instrument" and inserting in lieu thereof "debt instrument (within the meaning of section 1275(a)(1))".

(2) Notwithstanding section 669 of the Reform Act, the amendment made by section 662(c) of the Reform Act shall

ly to taxable years beginning after December 31, 1986, but only in the case of obligations acquired after October 22, 1986.

(3) Subsection (c) of section 856 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

(8) **TREATMENT OF LIQUIDATING GAINS.**—In the case of the taxable year in which a real estate investment trust is completely liquidated, there shall not be taken into account under paragraph (4) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation.”

(4)(A) Paragraph (6) of section 856(c) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(G) **TREATMENT OF CERTAIN INTEREST RATE AGREEMENTS.**—Except to the extent provided by regulations, any—

Real property.

“(i) payment to a real estate investment trust under a bona fide interest rate swap or cap agreement entered into by the real estate investment trust to hedge any variable rate indebtedness of such trust incurred or to be incurred to acquire or carry real estate assets, and

“(ii) any gain from the sale or other disposition of such agreement, shall be treated as income qualifying under paragraph (2) and such agreement shall be treated as a security for purposes of paragraph (4)(A).”

(B) The amendment made by subparagraph (A) shall apply to taxable years ending after the date of the enactment of this Act.

26 USC 856 note.

(5) Subclause (I) of section 856(c)(6)(D)(ii) of the 1986 Code (as added by section 662 of the Reform Act) is amended by striking “stock in” and inserting in lieu thereof “stock (or certificates of beneficial interests) in”.

AMENDMENTS RELATED TO SECTION 663 OF THE REFORM ACT.—(1) Subparagraph (A) of section 856(d)(6) of the 1986 Code is amended to read as follows:

Real property.

“(A) **IN GENERAL.**—If—

“(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

“(ii) a portion of the amount such tenant receives or accrues, directly or indirectly, from subtenants consists of qualified rents,

then the amounts which the trust receives or accrues from the tenant shall not be excluded from the term ‘rents from real property’ by reason of being based on the income or profits of such tenant to the extent the amounts so received or accrued are attributable to qualified rents received or accrued by such tenant.”

(2) Subsection (f) of section 856 of the 1986 Code is amended to read as follows:

INTEREST.—

(1) **IN GENERAL.**—For purposes of paragraphs (2)(B) and (3)(B) subsection (c), the term ‘interest’ does not include any amount received or accrued, directly or indirectly, if the deter-

mination of such amount depends in whole or in part on the income or profits of any person except that—

“(A) any amount so received or accrued shall not be excluded from the term ‘interest’ solely by reason of being based on a fixed percentage or percentages of receipts or sales, and

“(B) where a real estate investment trust receives any amount which would be excluded from the term ‘interest’ solely because the debtor of the real estate investment trust receives or accrues any amount the determination of which depends in whole or in part on the income or profits of any person, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from the debtor will be excluded from the term ‘interest’.

“(2) SPECIAL RULE.—If—

“(A) a real estate investment trust receives or accrues with respect to an obligation secured by a mortgage on real property or an interest in real property amounts from a debtor which derives substantially all of its gross income with respect to such property (not taking into account any gain on any disposition) from the leasing of substantially all of its interests in such property to tenants, and

“(B) a portion of the amount which such debtor receives or accrues, directly or indirectly, from tenants consists of qualified rents (as defined in subsection (d)(6)(B)),

then the amounts which the trust receives or accrues from such debtor shall not be excluded from the term ‘interest’ by reason of being based on the income or profits of such debtor to the extent the amounts so received are attributable to qualified rents received or accrued by such debtor.”

(r) AMENDMENT RELATED TO SECTION 664 OF THE REFORM ACT.—Clause (i) of section 857(e)(2)(B) of the 1986 Code is amended by striking out “as original issue discount on instruments” and inserting “with respect to instruments”

(s) AMENDMENTS RELATED TO SECTION 668 OF THE REFORM ACT.—

(1) Paragraph (2) of section 4981(e) of the 1986 Code is amended to read as follows:

“(2) CAPITAL GAIN NET INCOME.—

“(A) IN GENERAL.—The term ‘capital gain net income’ has the meaning given such term by section 1222(9) (determined by treating the calendar year as the trust’s taxable year).

“(B) REDUCTION FOR NET ORDINARY LOSS.—The amount determined under subparagraph (A) shall be reduced by the amount of the trust’s net ordinary loss for the taxable year.

“(C) NET ORDINARY LOSS.—For purposes of this paragraph, the net ordinary loss for the calendar year is the amount which would be net operating loss of the trust for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1).”

(2) Subparagraph (C) of section 857(b)(3) of the 1986 Code is amended by striking out “real estate investment trust taxable income” in the last sentence and inserting in lieu thereof “the taxable income of the real estate investment trust”.

(3) Subparagraph (A) of section 4981(c)(1) of the 1986 Code is amended by striking out “such calendar year” and inserting in

lieu thereof “such calendar year (but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D))”.

(4) Subsection (a) of section 857 of the 1986 Code is amended by adding at the end thereof the following new sentence:

“The Secretary may waive the requirements of paragraph (1) for a taxable year if the real estate investment trust establishes to the satisfaction of the Secretary that it was unable to meet such requirements by reason of distributions previously made to meet the requirements of section 4981.”

(5) Effective with respect to dividends declared in 1988 and subsequent calendar years, paragraph (8) of section 857(b) of the 1986 Code is amended—

(A) by striking out “in December” and inserting in lieu thereof “in October, November, or December”,

(B) by striking out “in such month” and inserting in lieu thereof “in such a month”,

(C) by striking out “on such date” in subparagraphs (A) and (B) and inserting in lieu thereof “on December 31 of such calendar year”, and

(D) by striking out “before February 1” and inserting in lieu thereof “during January”.

AMENDMENTS RELATED TO SECTION 671 OF THE REFORM ACT.—

(1) Paragraph (1) of section 860C(e) of the 1986 Code is amended to read as follows:

“(1) AMOUNTS TREATED AS ORDINARY.—Any amount taken into account under subsection (a) by any holder of a residual interest in a REMIC shall be treated as ordinary income or ordinary loss, as the case may be.”

(2)(A) Paragraph (4) of section 860D(a) of the 1986 Code is amended—

(i) by striking out “4th month ending after” and inserting in lieu thereof “3rd month beginning after”, and

(ii) by striking out “and each quarter ending thereafter” and inserting in lieu thereof “and at all times thereafter”.

(B) The amendment made by subparagraph (A)(ii) shall take effect on January 1, 1988.

(3)(A) Clause (i) of section 860F(a)(2)(A) of the 1986 Code is amended to read as follows:

“(i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation),”.

(B)(i) Paragraph (2) of section 860F(a) of the 1986 Code is amended by striking out the last sentence of subparagraph (A).

(ii) Subsection (a) of section 860F of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) EXCEPTIONS.—Notwithstanding subparagraphs (A) and (D) of paragraph (1), the term ‘prohibited transaction’ shall not include any disposition—

“(A) required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages, or

“(B) to facilitate a clean-up call (as defined in regulations).”

(C) Subparagraph (D) of section 860F(a)(2) of the 1986 Code is amended by striking out “described in subsection (b)”.

Effective date.
26 USC 860D
note.

(4) Subparagraph (A) of section 860F(b)(1) of the 1986 Code is amended by striking out "the transfer of any property to a REMIC" and inserting in lieu thereof "the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC".

(5)(A) Paragraph (1) of section 860G(a) of the 1986 Code is amended to read as follows:

"(1) **REGULAR INTEREST.**—The term 'regular interest' means any interest in a REMIC which is issued on the startup day with fixed terms and which is designated as a regular interest if—

"(A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

"(B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity—

"(i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or

"(ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

The interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments."

(B) Paragraph (2) of section 860G(a) of the 1986 Code is amended to read as follows:

"(2) **RESIDUAL INTEREST.**—The term 'residual interest' means an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest."

(C) Paragraph (3) of section 860G(a) of the 1986 Code is amended—

(i) by striking out "on or before the startup day" in subparagraph (A)(i) and inserting in lieu thereof "on the startup day in exchange for regular or residual interests in the REMIC",

(ii) by inserting "if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day" before the comma at the end of subparagraph (A)(ii), and

(iii) by striking out "on or before the startup day" in subparagraph (C) and inserting in lieu thereof "on the startup day in exchange for regular or residual interests in the REMIC".

(D) Subparagraph (A) of section 860G(a)(4) of the 1986 Code is amended to read as follows:

"(A) which would be a qualified mortgage if transferred on the startup day in exchange for regular or residual interests in the REMIC, and".

(E) Paragraph (9) of section 860G(a) of the 1986 Code is amended to read as follows:

"(9) **STARTUP DAY.**—The term 'startup day' means the day on which the REMIC issues all of its regular and residual interests. To the extent provided in regulations, all interests issued (and all transfers to the REMIC) during any period (not exceeding 10 days) permitted in such regulations shall be treated as occur-

ing on the day during such period selected by the REMIC for purposes of this paragraph.”

(F) The amendments made by this paragraph shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before July 1, 1987.

(6) Paragraph (3) of section 860G(a) of the 1986 Code is amended—

(A) by striking out “directly or indirectly,” in subparagraph (A), and

(B) by adding at the end thereof the following new sentence:

For purposes of this subparagraph, any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property.”

(7) Subparagraph (B) of section 860G(a)(7) of the 1986 Code is amended by inserting before the period at the end of the 1st sentence the following: “or lower than expected returns on cash flow investments”.

(8)(A) Paragraph (8) of section 860G(a) of the 1986 Code is amended—

(i) by striking out “section 856(e)” in subparagraph (A) and inserting in lieu thereof “section 856(e) (without regard to paragraph (5) thereof)”, and

(ii) by striking out the last sentence and inserting in lieu thereof the following:

Solely for purposes of section 860D(a), the determination of whether any property is foreclosure property shall be made without regard to section 856(e)(4).”

(B) Section 860G of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

TAX ON INCOME FROM FORECLOSURE PROPERTY.—

“(1) IN GENERAL.—A tax is hereby imposed for each taxable year on the net income from foreclosure property of each REMIC. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

“(2) NET INCOME FROM FORECLOSURE PROPERTY.—For purposes of this part, the term ‘net income from foreclosure property’ means the amount which would be the REMIC’s net income from foreclosure property under section 857(b)(4)(B) if the REMIC were a real estate investment trust.”

(C) Paragraph (1) of section 860C(b) of the 1986 Code is amended by striking out “and” at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new subparagraph:

“(E) the amount of the net income from foreclosure property (if any) shall be reduced by the amount of the tax imposed by section 860G(c).”

(9)(A) Section 860G of the 1986 Code (as amended by paragraph (8)) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

TAX ON CONTRIBUTIONS AFTER STARTUP DATE.—

26 USC 860G
note.

“(1) **IN GENERAL.**—Except as provided in paragraph (2), if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.

“(2) **EXCEPTIONS.**—Paragraph (1) shall not apply to any contribution which is made in cash and is described in any of the following subparagraphs:

“(A) Any contribution to facilitate a clean-up call (as defined in regulations) or a qualified liquidation.

“(B) Any payment in the nature of a guarantee.

“(C) Any contribution during the 3-month period beginning on the startup day.

“(D) Any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC.

“(E) Any other contribution permitted in regulations.”

(B) The amendment made by subparagraph (A) shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before July 1, 1987.

(10) Subsection (e) of section 860G of the 1986 Code (as redesignated by paragraph (9)) is amended by striking out “and” at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof a comma, and by adding at the end thereof the following new paragraphs:

“(4) providing appropriate rules for treatment of transfers of qualified replacement mortgages to the REMIC where the transferor holds any interest in the REMIC, and

“(5) providing that a mortgage will be treated as a qualified replacement mortgage only if it is part of a bona fide replacement (and not part of a swap of mortgages).”

(11) Paragraph (6) of section 856(c) of the 1986 Code is amended by redesignating the last subparagraph as subparagraph (F) and by striking out the subparagraph (D) added by section 671(b)(1) of the Reform Act and inserting in lieu thereof the following:

“(E) A regular or residual interest in a REMIC shall be treated as a real estate asset, and any amount includible in gross income with respect to such an interest shall be treated as interest on an obligation secured by a mortgage on real property; except that, if less than 95 percent of the assets of such REMIC are real estate assets (determined as if the real estate investment trust held such assets), such real estate investment trust shall be treated as holding directly (and as receiving directly) its proportionate share of the assets and income of the REMIC. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest held by such REMIC in another REMIC shall be treated as a real estate asset under principles similar to the principles of the preceding sentence, except that, if such REMIC's are part of a tiered structure, they shall be treated as one REMIC for purposes of this subparagraph.”

(12) Clause (xi) of section 7701(a)(19)(C) of the 1986 Code is amended by striking out “are loans described” and inserting in lieu thereof “are assets described”.

(13) Subparagraph (B) of section 860E(c)(2) of the 1986 Code is amended by striking out "issue price of residual interest" and inserting in lieu thereof "issue price of the residual interest".

(14) Clause (ii) of section 860F(b)(1)(D) of the 1986 Code is amended by striking out "the real estate mortgage pool" and inserting in lieu thereof "the REMIC".

(15) Subsection (a) of section 860E of the 1986 Code is amended by adding at the end thereof the following new paragraphs:

"(3) SPECIAL RULE FOR AFFILIATED GROUPS.—All members of an affiliated group filing a consolidated return shall be treated as a taxpayer for purposes of this subsection, except that paragraph (4) shall be applied separately with respect to each corporation which is a member of such group and to which section 593 applies.

"(4) TREATMENT OF CERTAIN SUBSIDIARIES.—

"(A) IN GENERAL.—For purposes of this subsection, a corporation to which section 593 applies and each qualified subsidiary of such corporation shall be treated as a single corporation to which section 593 applies.

"(B) QUALIFIED SUBSIDIARY.—For purposes of this subsection, the term 'qualified subsidiary' means any corporation—

"(i) all the stock of which, and substantially all the indebtedness of which, is held directly by the corporation to which section 593 applies, and

"(ii) which is organized and operated exclusively in connection with the organization and operation of 1 or more REMIC's."

(16)(A) Subsection (a) of section 860D of the 1986 Code is amended by striking out "and" at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(6) with respect to which there are reasonable arrangements designed to ensure that—

"(A) residual interests in such entity are not held by disqualified organizations (as defined in section 860E(e)(5)), and

"(B) information necessary for the application of section 860E(e) will be made available by the entity."

(B) Section 860E of the 1986 Code is amended by adding at the end thereof the following new subsection:

TAX ON TRANSFERS OF RESIDUAL INTERESTS TO CERTAIN ORGANIZATIONS, ETC.—

"(1) IN GENERAL.—A tax is hereby imposed on any transfer of residual interest in a REMIC to a disqualified organization.

"(2) AMOUNT OF TAX.—The amount of the tax imposed by paragraph (1) on any transfer of a residual interest shall be equal to the product of—

"(A) the amount (determined under regulations) equal to the present value of the total anticipated excess inclusions with respect to such interest for periods after such transfer, multiplied by

"(B) the highest rate of tax specified in section 11(b)(1).

"(3) LIABILITY.—The tax imposed by paragraph (1) on any transfer shall be paid by the transferor; except that, where such

transfer is through an agent for a disqualified organization, such tax shall be paid by such agent.

“(4) **TRANSFeree FURNISHES AFFIDAVIT.**—The person (otherwise liable for any tax imposed by paragraph (1)) shall be relieved of liability for the tax imposed by paragraph (1) with respect to any transfer if—

“(A) the transferee furnishes to such person an affidavit that the transferee is not a disqualified organization, and

“(B) as of the time of the transfer, such person does not have actual knowledge that such affidavit is false.

“(5) **DISQUALIFIED ORGANIZATION.**—For purposes of this section, the term ‘disqualified organization’ means—

“(A) the United States, any State or political subdivision thereof, any foreign government, any international organization, or any agency or instrumentality of any of the foregoing,

“(B) any organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter unless such organization is subject to the tax imposed by section 511, and

“(C) any organization described in section 1381(a)(2)(C). For purposes of subparagraph (A), the rules of section 168(h)(2)(D) (relating to treatment of certain taxable instrumentalities) shall apply; except that, in the case of the Federal Home Loan Mortgage Corporation, clause (ii) of such section shall not apply.

“(6) **TREATMENT OF PASS-THRU ENTITIES.**—

“(A) **IMPOSITION OF TAX.**—If, at any time during any taxable year of a pass-thru entity, a disqualified organization is the record holder of an interest in such entity, there is hereby imposed on such entity for such taxable year a tax equal to the product of—

“(i) the amount of excess inclusions for such taxable year allocable to the interest held by such disqualified organization, multiplied by

“(ii) the highest rate of tax specified in section 11(b)(1).

“(B) **PASS-THRU ENTITY.**—For purposes of this paragraph, the term ‘pass-thru entity’ means—

“(i) any regulated investment company, real estate investment trust, or common trust fund,

“(ii) any partnership, trust, or estate, and

“(iii) any organization to which part I of subchapter T applies.

Except as provided in regulations, a person holding an interest in a pass-thru entity as a nominee for another person shall, with respect to such interest, be treated as a pass-thru entity.

“(C) **TAX TO BE DEDUCTIBLE.**—Any tax imposed by this paragraph with respect to any excess inclusion of any pass-thru entity for any taxable year shall, for purposes of this title (other than this subsection), be applied against (and operate to reduce) the amount included in gross income with respect to the residual interest involved.

“(D) **EXCEPTION WHERE HOLDER FURNISHES AFFIDAVIT.**—No tax shall be imposed by subparagraph (A) with respect to any interest in a pass-thru entity for any period if—

“(i) the record holder of such interest furnishes to such pass-thru entity an affidavit that such record holder is not a disqualified organization, and

“(ii) during such period, the pass-thru entity does not have actual knowledge that such affidavit is false.

“(7) **WAIVER.**—The Secretary may waive the tax imposed by paragraph (1) on any transfer if—

“(A) within a reasonable time after discovery that the transfer was subject to tax under paragraph (1), steps are taken so that the interest is no longer held by the disqualified organization, and

“(B) there is paid to the Secretary such amounts as the Secretary may require.

“(8) **ADMINISTRATIVE PROVISIONS.**—For purposes of subtitle F, the taxes imposed by this subsection shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.”

“(C) Paragraph (2) of section 26(b) of the 1986 Code is amended striking out “and” at the end of subparagraph (J), by striking out the period at the end of subparagraph (K) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new subparagraph:

“(L) section 860E(e) (relating to taxes with respect to certain residual interests).”

“(D)(i) The amendments made by subparagraph (A) shall apply in the case of any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code, as in effect on the day before the date of the enactment of this Act) is after March 31, 1988; except that such amendments shall not apply in the case of a REMIC formed pursuant to a binding written contract in effect on such date.

26 USC 860D
note.

“(ii) The amendments made by subparagraphs (B) and (C) shall apply to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as added by such amendments) shall apply to transfers after March 31, 1988; except that such amendments shall not apply to any transfer pursuant to a binding written contract in effect on such date.

26 USC 860E
note.

“(iii) Except as provided in clause (iv), the amendments made by subparagraphs (B) and (C) (to the extent they relate to paragraph (6) of section 860E(e) of the 1986 Code as so added) shall apply to excess inclusions for periods after March 31, 1988 but only to the extent such inclusions are—

“(I) allocable to an interest in a pass-thru entity acquired after March 31, 1988, or

“(II) allocable to an interest in a pass-thru entity acquired on or before March 31, 1988, but attributable to a residual interest acquired by the pass-thru entity after March 31, 1988.

“(iv) For purposes of the preceding sentence, any interest in a pass-thru entity (or residual interest) acquired after March 31, 1988, pursuant to a binding written contract in effect on such date shall be treated as acquired before such date.

“(v) In the case of any real estate investment trust, regulated investment company, common trust fund, or publicly traded partnership, no tax shall be imposed under section 860E(e)(6) of the 1986 Code (as added by the amendment made by subpara-

graph (B)) for any taxable year beginning before January 1, 1989.

(17) Subparagraph (B) of section 860E(c)(2) of the 1986 Code is amended—

(A) by inserting “(adjusted for contributions)” after “residual interest” the second place it appears, and

(B) by striking “decreased by” in clause (ii) and inserting in lieu thereof “decreased (but not below zero) by”.

(18)(A) Subsection (e) of section 860F of the 1986 Code is amended by adding at the end thereof the following new sentences: “Such return shall be filed by the REMIC. The determination of who may sign such return shall be made without regard to the first sentence of this subsection.”

26 USC 860F
note.

(B) Unless the REMIC otherwise elects, the amendment made by subparagraph (A) shall not apply to any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before the date of the enactment of this Act.

(19) Subsection (a) of section 860D of the 1986 Code is amended by adding at the end thereof the following new sentence: “In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).”

(20) Subsection (a) of section 860A of the 1986 Code is amended by striking out “this chapter” each place it appears and inserting in lieu thereof “this subtitle”.

(21) Paragraph (1) of section 860C(b) of the 1986 Code is amended by striking out “and in the same manner” and inserting in lieu thereof “and, except as provided in regulations, in the same manner”.

(22) The following sections of the 1986 Code are each amended by striking out “real estate mortgage pool” and inserting in lieu thereof “REMIC”:

(A) Section 382(l)(4)(B)(ii).

(B) Section 860F(a)(2)(A)(iii).

(C) Section 860F(a)(2)(C).

(D) Section 860F(b)(1)(C)(ii).

(E) Section 860F(b)(1)(D)(ii).

(23) Subsection (d) of section 860E of the 1986 Code is amended by adding at the end thereof the following new sentence: “Rules similar to the rules of the preceding sentence shall apply also in the case of regulated investment companies, common trust funds, and organizations to which part I of subchapter T applies.”

(24) Subparagraph (C) of section 6049(d)(7) of the 1986 Code is amended by striking out “the issue price” and inserting in lieu thereof “the adjusted issue price”.

(25)(A) Paragraph (19) of section 7701(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: “For purposes of determining whether any interest in a REMIC qualifies under clause (xi), any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principles of clause (xi); except that, if such REMIC’s are part of a tiered structure, they shall be treated as 1 REMIC for purposes of clause (xi).”

Loans.

(B) Paragraph (4) of section 593(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: “For

purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMIC's are part of a tiered structure, they shall be treated as 1 REMIC for purposes of this paragraph."

(26) Section 860E of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) **TREATMENT OF VARIABLE INSURANCE CONTRACTS.**—Except as provided in regulations, with respect to any variable contract (as defined in section 817), there shall be no adjustment in the reserve to the extent of any excess inclusion."

(27) Subsection (a) of section 860E of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) **COORDINATION WITH SECTION 172.**—Any excess inclusion for any taxable year shall not be taken into account—

"(A) in determining under section 172 the amount of any net operating loss for such taxable year, and

"(B) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2)."

(u) **AMENDMENTS RELATED TO SECTION 672 OF THE REFORM ACT.**—

(1) Subparagraph (B) of section 163(e)(2) of the 1986 Code is amended by striking out "paragraph (6)" and inserting in lieu thereof "paragraph (7)".

(2) Subparagraph (B) of section 1278(a)(4) of the 1986 Code is amended by striking out "section 1272(a)(6)" and inserting in lieu thereof "section 1272(a)(7)".

(3) Section 1288(a) of the 1986 Code is amended by striking out "paragraph (6)" each place it appears and inserting in lieu thereof "paragraph (7)".

(4) Sections 1271(a)(2)(A)(ii) and 1275(a)(4)(B)(ii)(I) of the 1986 Code are each amended by striking out "subsection (a)(6)" and inserting in lieu thereof "subsection (a)(7)".

(v) **AMENDMENT RELATED TO SECTION 674 OF THE REFORM ACT.**—Subparagraph (A) of section 6049(d)(7) of the 1986 Code is amended by inserting "(and such amounts shall be treated as paid when includible in gross income under section 860B(b))" before the period at the end thereof.

(w) **AMENDMENTS RELATED TO SECTION 675 OF THE REFORM ACT.**—

(1) Subsection (a) of section 675 of the Reform Act is amended to read as follows:

"(a) **GENERAL RULE.**—Except as otherwise provided in this section, the amendments made by this subtitle shall take effect on January 1, 1987."

(2) Section 675 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(d) **STUDY.**—The Secretary of the Treasury or his delegate shall conduct a study of the operation of the amendments made by this part and their competitive impact on savings and loan institutions and similar financial institutions. Not later than January 1, 1990, the Secretary shall submit a report of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (together with such recommendations as he may deem advisable)."

26 USC 860A
note.

Effective date.

Banks and
banking.
26 USC 860A
note.
Reports.

property. SEC. 1007. AMENDMENTS RELATED TO TITLE VII OF THE REFORM ACT.

(a) AMENDMENTS TO SECTION 55 OF THE 1986 CODE.—

(1) Paragraph (1) of section 55(c) of the 1986 Code is amended by inserting before the period at the end of the first sentence the following: “and the section 936 credit allowable under section 27(b)”.

(2) Paragraph (2) of section 55(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“If a taxpayer is subject to the regular tax, such taxpayer shall be subject to the tax imposed by this section (and, if the regular tax is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence).”

(3) Effective with respect to taxable years ending after the date of the enactment of this Act, paragraph (3) of section 55(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: “In the case of a taxpayer described in paragraph (1)(C)(i), alternative minimum taxable income shall be increased by the lesser of (i) 25 percent of the excess of alternative minimum taxable income (determined without regard to this sentence) over \$155,000, or (ii) \$20,000.”.

(b) AMENDMENTS TO SECTION 56 OF THE 1986 CODE.—

(1) Paragraph (3) of section 56(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: “For purposes of the preceding sentence, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under section 460(b)(2) by using the simplified procedures for allocation of costs prescribed under section 460(b)(4).”

(2) Subparagraph (E) of section 56(b)(1) of the 1986 Code is amended to read as follows:

“(E) STANDARD DEDUCTION AND DEDUCTION FOR PERSONAL EXEMPTIONS NOT ALLOWED.—The standard deduction under section 63(c), the deduction for personal exemptions under section 151, and the deduction under section 642(b) shall not be allowed.”

(3) Subparagraph (C) of section 56(b)(1) of the 1986 Code is amended by striking out “and” at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof a comma, and by adding at the end thereof the following new clauses:

“(iv) in lieu of the exception under section 163(d)(3)(B)(i), the term ‘investment interest’ shall not include any qualified housing interest (as defined in subsection (e)), and

“(v) the adjustments of this section and sections 57 and 58 shall apply in determining net investment income under section 163(d).”

(4) Clause (iii) of section 56(b)(1)(C) of the 1986 Code is amended—

(A) by striking out “specified activity bond” and inserting in lieu thereof “specified private activity bond”, and

(B) by striking out “section 56(a)(5)(B)” and inserting in lieu thereof “section 57(a)(5)(B)”.

(5) Subparagraph (A) of section 56(d)(2) of the 1986 Code is amended—

(A) by striking out “(other than subsection (a)(6) thereof), and

(B) by adding at the end thereof the following new sentence:

“An item of tax preference shall be taken into account under clause (ii) only to the extent such item increased the amount of the net operating loss for the taxable year under section 172(c).”

(6)(A) Paragraph (1) of section 56(e) of the 1986 Code is amended—

(i) by striking out “interest which is” and inserting in lieu thereof “interest which is qualified residence interest (as defined in section 163(h)(3)) and is”, and

(ii) by striking out “section 163(h)(3)” in subparagraph (B) and inserting in lieu thereof “section 163(h)(4)”.

(B) Paragraph (3) of section 56(e) of the 1986 Code is amended by striking out “interest paid or accrued” and inserting in lieu thereof “interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued”.

(7) The last sentence of section 56(f)(2)(B) of the 1986 Code is amended by striking out “any such taxes” and inserting in lieu thereof “any such taxes (otherwise eligible for the credit provided by section 901 without regard to section 901(j))”.

(8) Clause (iii) of section 56(f)(3)(A) of the 1986 Code is amended by striking out “an income statement” and inserting in lieu thereof “an income statement for a substantial nontax purpose”.

(9) Subparagraph (B) of section 56(f)(3) of the 1986 Code is amended by striking out “paragraph (3)(A)” and inserting in lieu thereof “this subsection”.

(10) Subparagraph (C) of section 56(f)(3) of the 1986 Code is amended by adding at the end thereof the following new sentence: “If the taxpayer has 2 or more statements described in the clause (or subclause) with the lowest number designation, the applicable financial statement shall be the one of such statements specified in regulations.”

(11)(A) Subparagraph (F) of section 56(f)(2) of the 1986 Code is amended to read as follows:

“(F) TREATMENT OF TAXES ON DIVIDENDS FROM 936 CORPORATIONS.—

“(i) IN GENERAL.—For purposes of determining the alternative minimum tax foreign tax credit, 50 percent of any withholding tax or income tax paid to a possession of the United States with respect to dividends received from a corporation eligible for the credit provided by section 936 shall be treated as a tax paid to a foreign country by the corporation receiving the dividend.

“(ii) LIMITATION.—If the aggregate amount of the dividends referred to in clause (i) for any taxable year exceeds the excess referred to in paragraph (1), the amount treated as a tax paid to a foreign country under clause (i) shall not exceed the amount which would be so treated without regard to this clause multiplied by a fraction—

“(I) the numerator of which is the excess referred to in paragraph (1), and

“(II) the denominator of which is the aggregate amount of such dividends.

“(iii) TREATMENT OF TAXES IMPOSED ON 936 CORPORATION.—For purposes of this subparagraph, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902 (and the amount of any such dividend shall be increased by the amount so treated).”

(B) Clause (iii) of section 56(g)(4)(C) of the 1986 Code is amended by striking out “clause (ii)(I)” and inserting in lieu thereof “clause (i)”.

(12) Clause (iii) of section 56(g)(4)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: “The preceding sentence shall not apply to any annuity contract held under a plan described in section 403(a).”

(13) Paragraph (1) of section 56(c) of the 1986 Code is amended—

(A) by striking out “ADJUSTED EARNINGS AND PROFITS” in the paragraph heading and inserting in lieu thereof “ADJUSTED CURRENT EARNINGS”, and

(B) by striking out “ADJUSTED EARNINGS AND PROFITS” in the heading of subparagraph (B) and inserting in lieu thereof “ADJUSTED CURRENT EARNINGS”.

(14)(A) Subsection (b) of section 56 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) TREATMENT OF INCENTIVE STOCK OPTIONS.—Section 421 shall not apply to the transfer of stock acquired pursuant to the exercise of an incentive stock option (as defined in section 422A). The adjusted basis of any stock so acquired shall be determined on the basis of the treatment prescribed by the preceding sentence.”

(B) Paragraph (3) of section 57(a) of the 1986 Code is hereby repealed.

(C) The amendments made by this paragraph shall apply with respect to options exercised after December 31, 1987.

(15) Clause (i) of section 56(a)(1)(A) of the 1986 Code is amended by striking out “REAL” in the heading and inserting in lieu thereof “PERSONAL”.

(16) The heading of paragraph (1) of section 56(b) of the 1986 Code is amended by striking out “ITEMIZED”.

(17) Subparagraph (A) of section 56(g)(4) of the 1986 Code is amended by adding at the end thereof the following new clauses:

“(vi) ELECTION TO HAVE CUMULATIVE LIMITATION.—

“(I) IN GENERAL.—In the case of any property placed in service during a taxable year to which an election under this clause applies, in lieu of applying clause (i), the depreciation deduction for such property for any taxable year shall be the lesser of the accumulated 168(g) depreciation or the accumulated book depreciation; reduced by the aggregate amount of the depreciation deductions

determined under this subclause with respect to such property for prior taxable years.

“(II) ACCUMULATED 166(g) DEPRECIATION.—For purposes of this clause, the term ‘accumulated section 168(g) depreciation’ means the aggregate amount of the depreciation deductions determined under the alternative system of section 168(g) with respect to the property for all periods before the close of the taxable year.

“(III) ACCUMULATED BOOK DEPRECIATION.—For purposes of this clause, the term ‘accumulated book depreciation’ means the aggregate amount of the depreciation deductions determined under the method used for book purposes with respect to the property for all periods before the close of the taxable year.

“(IV) ELECTION.—The taxpayer may make an election under this clause for any taxable year beginning after 1989. Such an election, once made with respect to any such taxable year, shall apply to all property placed in service during such taxable year, and shall be irrevocable.

“(V) SIMILAR RULES FOR PROPERTY DESCRIBED IN CLAUSE (i), (iii), OR (iv).—Rules similar to the rules of the preceding provisions of this clause shall also apply in the case of property to which clause (ii), (iii), or (iv) applies.

“(vii) SPECIAL RULE FOR CERTAIN PROPERTY.—In the case of any property described in paragraph (1), (2), (3), or (4) of section 168(f), the amount of depreciation allowable for purposes of the regular tax shall be treated as the amount allowable under the alternative system of section 168(g).”

(18) Paragraph (4) of section 56(g) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(I) ADJUSTED BASIS.—The adjusted basis of any property with respect to which an adjustment under this paragraph applies shall be determined by applying the treatment prescribed in this paragraph.”

(19) Subsection (a) of section 56 of the 1986 Code is amended by adding at the end thereof the following new paragraph:
 “(8) SECTION 87 NOT APPLICABLE.—Section 87 (relating to alcohol fuel credit) shall not apply.”

(c) AMENDMENTS TO SECTION 57 OF THE 1986 CODE.—

(1) Clause (iii) of section 57(a)(5)(C) of the 1986 Code is amended by inserting “(whether a current or advance refunding bond)” after “any refunding bond”.

(2) Clause (i) of section 57(a)(5)(C) of the 1986 Code is amended to read as follows:

“(i) IN GENERAL.—For purposes of this part, the term ‘specified private activity bond’ means any private activity bond (as defined in section 141) which is issued after August 7, 1986, and the interest on which is not includible in gross income under section 103.”

(3) Subparagraph (A) of section 57(a)(6) of the 1986 Code is amended by inserting “or 642(c)” after “section 170”.

(d) AMENDMENTS TO SECTION 58 OF THE 1986 CODE.—

(1) Paragraph (2) of section 58(a) of the 1986 Code is amended—

(A) by striking out “(as modified by section 461(i)(4)(A))”, and

(B) by striking out “section 469(d), without regard to paragraph (1)(B) thereof” and inserting in lieu thereof “section 469(c)”.

(2) Paragraph (3) of section 58(a) of the 1986 Code is amended by striking out “section 469(g)(1)(C)” and inserting in lieu thereof “section 469(j)(2)”.

(3) Subsection (a) of section 58 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) DETERMINATION OF LOSS.—In determining the amount of the loss from any tax shelter farm activity, the adjustments of sections 56 and 57 shall apply.”

(4) Subsection (b) of section 58 of the 1986 Code is amended by striking out paragraphs (1), (2), and (3), and inserting in lieu thereof the following:

“(1) the adjustments of sections 56 and 57 shall apply,

“(2) the provisions of section 469(m) (relating to phase-in of disallowance) shall not apply, and

“(3) in lieu of applying section 469(j)(7), the passive activity loss of a taxpayer shall be computed without regard to qualified housing interest (as defined in section 56(e)).”

(e) AMENDMENTS TO SECTION 59 OF THE 1986 CODE.—

(1) Paragraph (2) of section 59(e) of the 1986 Code is amended by striking out “would have been allowable as a deduction” and inserting in lieu thereof “would have been allowable as a deduction (determined without regard to section 291)”.

(2) Subsection (h) of section 59 of the 1986 Code is amended by striking out “taxable year—” and all that follows and inserting in lieu thereof “taxable year with the adjustments of sections 56, 57, and 58.”

(3) Paragraph (1) of section 59(a) of the 1986 Code is amended by striking out “and” at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new subparagraph:

Agriculture and
 agricultural
 commodities.
 Taxes.

Taxes.

“(D) the determination of whether any income is high-taxed income for purposes of section 904(d)(2) were made on the basis of the applicable rate specified in section 55(b)(1)(A) in lieu of the highest rate of tax specified in section 1 or 11 (whichever applies).”

- (4) Subsection (i) of section 59 of the 1986 Code is amended—
 (A) by striking out “of this subtitle” and inserting in lieu thereof “of this subtitle (other than this part)”, and
 (B) by striking out “by this title” and inserting in lieu thereof “by this subtitle”.

TRANSITIONAL PROVISIONS.—

(1) In the case of the taxable year of an estate or trust which begins before January 1, 1987, and ends on or after such date, the items of tax preference apportioned to any beneficiary of such estate or trust under section 58(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be taken into account for purposes of determining the amount of the tax imposed by section 55 of the Internal Revenue Code of 1986 (as amended by the Tax Reform Act of 1986) on such beneficiary for such beneficiary's taxable year in which such taxable year of the estate or trust ends.

26 USC 55 note.

(2) The last sentence of subparagraph (B) of section 701(f)(6) of the Reform Act is amended to read as follows: “The aggregate amount of investment tax credits with respect to the unit in Mississippi allowed solely by reason of being described in this subparagraph shall not exceed \$141,000,000.”

26 USC 55 note.

(3) Subsection (f) of section 701 of the Reform Act is amended by adding at the end thereof the following new paragraph: “(7) AGREEMENT VESSEL DEPRECIATION ADJUSTMENT.—

“(A) For purposes of part VI of subchapter A of chapter 1 of the Internal Revenue Code of 1986, in the case of a qualified taxpayer, alternative minimum taxable income for the taxable year shall be reduced by an amount equal to the agreement vessel depreciation adjustment.

“(B) For purposes of this paragraph, the agreement vessel depreciation adjustment shall be an amount equal to the depreciation deduction that would have been allowable for such year under section 167 of such Code with respect to agreement vessels placed in service before January 1, 1987, if the basis of such vessels had not been reduced under section 607 of the Merchant Marine Act of 1936, as amended, and if depreciation with respect to such vessel had been computed using the 25-year straight-line method. The aggregate amount by which basis of a qualified taxpayer is treated as not reduced by reason of this subparagraph shall not exceed \$100,000,000.

“(C) For purposes of this paragraph, the term ‘qualified taxpayer’ means a parent corporation incorporated in the State of Delaware on December 1, 1972, and engaged in water transportation, and includes any other corporation which is a member of the affiliated group of which the parent corporation is the common parent. No taxpayer shall be treated as a qualified corporation for any taxable year beginning after December 31, 1991.”

(4)(A) If any property to which this paragraph applies is placed in service in a taxable year which begins before Janu-

26 USC 57 note.

ary 1, 1987, and ends on or after August 1, 1986, the item of tax preference determined under section 57(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) with respect to such property shall be the excess of—

- (i) the amount allowable as a deduction for depreciation or amortization for such taxable year, over
 - (ii) the amount which would be determined for such taxable year under the rules of paragraph (1) or (5) (whichever is appropriate) of section 56(a) of the Internal Revenue Code of 1954 (as amended by the Tax Reform Act of 1986).
- (B) This paragraph shall apply to any property—
- (i) which is described in paragraph (4) or (12) of section 57(a) of the Internal Revenue Code of 1954 (as so in effect), and
 - (ii) to which paragraph (1) or (5) of section 56(a) of the Internal Revenue Code of 1986 would apply if the taxable year referred to in subparagraph (A) began after December 31, 1986.

USC 59 note.

(5) In determining the amount of the alternative minimum tax foreign tax credit under section 59 of the 1986 Code, there shall not be taken into account any taxes paid or accrued in a taxable year beginning after December 31, 1986, which are treated under section 904(c) of the 1986 Code as paid or accrued in a taxable year beginning on or before December 31, 1986.

(g) MISCELLANEOUS AMENDMENTS.—

(1) Subparagraph (K) of section 26(b)(2) of the 1986 Code is amended by striking out the comma at the end thereof and inserting in lieu thereof “.”.

(2)(A) So much of section 38(c) as precedes paragraph (4) thereof is amended to read as follows:

“(c) LIMITATION BASED ON AMOUNT OF TAX.—

“(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of—

“(A) the tentative minimum tax for the taxable year, or

“(B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds \$25,000.

For purposes of the preceding sentence, the term ‘net income tax’ means the sum of the regular tax liability and the tax imposed by section 55, reduced by the credits allowable under subparts A and B of this part, and the term ‘net regular tax liability’ means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

“(2) REGULAR INVESTMENT TAX CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

“(A) IN GENERAL.—In the case of a C corporation, the amount determined under paragraph (1)(A) shall be reduced by the lesser of—

“(i) the portion of the regular investment tax credit not used against the normal limitation, or

“(ii) 25 percent of the taxpayer's tentative minimum tax for the taxable year.

“(B) PORTION OF REGULAR INVESTMENT TAX CREDIT NOT USED AGAINST NORMAL LIMIT.—For purposes of subparagraph (A), the portion of the regular investment tax credit

for any taxable year not used against the normal limitation is the excess (if any) of—

“(i) the portion of the credit under subsection (a) which is attributable to the application of the regular percentage under section 46, over

“(ii) the limitation of paragraph (1) (without regard to this paragraph) reduced by the portion of the credit under subsection (a) which is not so attributable.

“(C) LIMITATION.—In no event shall this paragraph permit the allowance of a credit which would result in a net chapter 1 tax less than an amount equal to 10 percent of the amount determined under section 55(b)(1)(A) without regard to the alternative tax net operating loss deduction. For purposes of the preceding sentence, the term ‘net chapter 1 tax’ means the sum of the regular tax liability for the taxable year and the tax imposed by section 55 for the taxable year, reduced by the sum of the credits allowable under this part for the taxable year (other than under section 34).”

(B) Subsection (c) of section 38 of the 1986 Code is amended—
(i) by redesignating paragraph (4) as paragraph (3), and
(ii) by striking out “subparagraphs (A) and (B) of paragraph (1)” each place it appears in such paragraph and inserting in lieu thereof “subparagraph (B) of paragraph (1).

(3)(A) Subsection (c) of section 47 of the 1986 Code is amended by striking out “or D” and inserting in lieu thereof “D, or G”.

(B) Subparagraph (D) of section 42(j)(4) of the 1986 Code is amended by striking out “or D” and inserting in lieu thereof “D, or G”.

(4) The last sentence of clause (ii) of section 53(d)(1)(B) of the 1986 Code is amended by striking out “earnings and profits” and inserting in lieu thereof “current earnings”.

(5) Sections 173(b), 174(e)(2), and 263(c) of the 1986 Code are each amended by striking out “section 59(d)” and inserting in lieu thereof “section 59(e)”.

(6) Section 511 of the 1986 Code is amended by striking out subsection (d).

(7) Sections 616(e) and 617(j) of the 1986 Code are each amended by striking out “section 58(i)” and inserting in lieu thereof “section 59(e)”.

(8) Paragraph (4) of section 701(c) of the Reform Act is amended by striking out “section 631(a)” and inserting in lieu thereof “section 221(a)”. 26 USC 38.

(9) Subparagraph (B) of section 1362(e)(5) of the 1986 Code is amended by striking out “Subsection (d)(2)” and inserting in lieu thereof “Subsection (d)”.

(10) Subsection (a) of section 6154 of the 1986 Code (as in effect before its repeal by the Revenue Act of 1987) is amended by striking out “11, 59A” and inserting in lieu thereof “11, 55, 59A”.

(11) Paragraph (1) of section 962(a) of the 1986 Code is amended—

(A) by striking out “section 1” and inserting in lieu thereof “sections 1 and 55”, and

(B) by striking out “section 11” and inserting in lieu thereof “sections 11 and 55”.

(12) Subsection (h) of section 32 of the 1986 Code is amended by striking out "for taxpayers other than corporations".

(13)(A) Subsection (d) of section 2 of the 1986 Code is amended by striking out "the tax imposed by section 1" and inserting in lieu thereof "the taxes imposed by sections 1 and 55".

(B) Subsection (d) of section 11 of the 1986 Code is amended by striking out "the tax imposed by subsection (a)" and inserting in lieu thereof "the taxes imposed by subsection (a) and section 55".

SEC. 1008. AMENDMENTS RELATED TO TITLE VIII OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 801 OF THE REFORM ACT.—

(1)(A) Subparagraph (B) of section 448(d)(2) of the 1986 Code (defining qualified personal service corporation) is amended by striking out "or indirectly" and inserting in lieu thereof "(or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a))".

(B) Section 448(d) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) USE OF RELATED PARTIES, ETC.—The Secretary shall prescribe such regulations as may be necessary to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section."

(2) Subparagraph (C) of section 448(d)(4) of the 1986 Code (relating to special rules for application of paragraph (2)) is amended by striking out "all such members" and inserting in lieu thereof "such group".

(3) Paragraph (2) of section 461(i) of the 1986 Code is amended to read as follows:

"(2) SPECIAL RULE FOR SPUDDING OF OIL OR GAS WELLS.—

"(A) IN GENERAL.—In the case of a tax shelter, economic performance with respect to amounts paid during the taxable year for drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.

"(B) DEDUCTION LIMITED TO CASH BASIS.—

"(i) TAX SHELTER PARTNERSHIPS.—In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term 'cash basis' shall be substituted for the term 'adjusted basis'.

"(ii) OTHER TAX SHELTERS.—Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

"(C) CASH BASIS DEFINED.—For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

"(i) any liability of the partnership, and

"(ii) any amount borrowed by the partner with respect to such partnership which—

“(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 465(b)(3)(C)), or

“(II) was secured by any asset of the partnership.”

(4) Section 464 of the 1986 Code (relating to limitations on deductions for certain farming expenses) is amended by adding at the end thereof the following new subsection:

“(g) **TERMINATION.**—Except as provided in subsection (f), subsections (a) and (b) shall not apply to any taxable year beginning after December 31, 1986.”

(5) Paragraph (4) of section 801(d) of the Reform Act is amended by striking out “the completed contract method” and inserting in lieu thereof “a method of accounting for long-term contracts”.

26 USC 448 note.

(6) Section 801(d) of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(5) **SPECIAL RULE FOR PARAGRAPHS (2) AND (3).**—If any loan, lease, contract, or evidence of any transaction to which paragraph (2) or (3) applies is transferred after June 10, 1987, to a person other than a related party (within the meaning of paragraph (2)), paragraph (2) or (3) shall cease to apply on and after the date of such transfer.”

(7) Paragraph (3) of section 448(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: “An S corporation shall not be treated as a tax shelter for purposes of this section merely by reason of being required to file a notice of exemption from registration with a State agency described in section 461(i)(3)(A), but only if there is a requirement applicable to all corporations offering securities for sale in the State that to be exempt from such registration the corporation must file such a notice.”

(8) Subparagraph (C) of section 448(d)(4) of the 1986 Code is amended by striking out “substantially all of” and inserting in lieu thereof “90 percent or more of”.

(9) Paragraph (3) of section 448(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(D) **TREATMENT OF PREDECESSORS.**—Any reference in this subsection to an entity shall include a reference to any predecessor of such entity.”

(b) **AMENDMENTS RELATED TO SECTION 803 OF THE REFORM ACT.**—

(1) Paragraph (2) of section 263A(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: “Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph.”

(2) Section 263A(c) of the 1986 Code (relating to general exceptions) is amended—

(A) by striking out “263(c), 616(a), or 617(a)” and inserting in lieu thereof “263(c), 263(i), 291(b)(2), 616, or 617”, and

(B) by adding at the end thereof the following new paragraph:

“(6) **COORDINATION WITH SECTION 59(e).**—Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under

section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof."

(3) Subparagraph (B) of section 263A(d)(2) of the 1986 Code (relating to special rule for person with minority interest who materially participates) is amended—

(A) by striking out "such grove, orchard, or vineyard" in clause (i) and inserting in lieu thereof "the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred", and

(B) by striking out "such grove, orchard, or vineyard during the 4-taxable year period beginning with the taxable year in which the grove, orchard, or vineyard was lost or damaged" and inserting in lieu thereof "the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred".

(4) Paragraph (3) of section 263A(f) of the 1986 Code (relating to interest relating to property used to produce property) is amended—

(A) by striking out "incurred or continued in connection with" and inserting in lieu thereof "allocable (as determined under paragraph (2)) to", and

(B) by inserting "(as so determined)" after "allocable".

(5) Section 447(b) of the 1986 Code is amended—

(A) by striking out "of" before "expenses", and

(B) by striking out "of" before "EXPENSES" in the heading thereof.

(6) Section 447(g)(1) of the 1986 Code is amended by striking out "trade or business of farming" each place it appears and inserting in lieu thereof "qualified farming trade or business".

(7) Paragraph (4)(A)(i) of section 803(d) of the Reform Act is amended by striking out "203" each place it appears and inserting in lieu thereof "204".

(8) The allocation used in the regulations prescribed under section 263A(h)(2) of the Internal Revenue Code of 1986 for apportioning storage costs and related handling costs shall be determined by dividing the amount of such costs by the beginning inventory balances and the purchases during the year and by multiplying the resulting allocation ratio by inventory amounts determined in accordance with the provisions of the joint explanatory statement of the committee of conference of the conference report accompanying H.R. 3838 (H.R. Rept. No. 99-841, Vol. II., 99th Cong., 2d Sess. II-306-307 (1986)).

(c) AMENDMENTS RELATED TO SECTION 804 OF THE REFORM ACT.—

(1) Paragraph (3) of section 460(b) of the 1986 Code is amended—

(A) by striking out "subparagraph" and inserting in lieu thereof "paragraph",

(B) by striking out "paragraph (1)" each place it appears in subparagraph (B) and inserting in lieu thereof "subparagraph (A)", and

(C) by striking out "paragraph (1)" in subparagraph (C) and inserting in lieu thereof "subparagraph (B)".

(2)(A) Section 460(b) of the 1986 Code (relating to percentage of completion method) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULES.—

26 USC 263A
note.

26 USC 263A
note.

Contracts.

“(A) **SIMPLIFIED METHOD OF COST ALLOCATION.**—In the case of any long-term contract, the Secretary may prescribe a simplified procedure for allocation of costs to such contract in lieu of the method of allocation under subsection (c).

“(B) **LOOK-BACK METHOD NOT TO APPLY TO CERTAIN CONTRACTS.**—Paragraph (2)(B) and subsection (a)(2) shall not apply to any contract—

“(i) the gross price of which (as of the completion of the contract) does not exceed the lesser of—

“(I) \$1,000,000, or

“(II) 1 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the contract was completed, and

“(ii) which is completed within 2 years of the contract commencement date.

For purposes of this subparagraph, rules similar to the rules of subsections (e)(2) and (f)(3) shall apply.”

(B) Section 460(b)(2) of the 1986 Code is amended by striking out “In” and inserting in lieu thereof “Except as provided in paragraph (4), in”.

(3) Subparagraph (B) of section 804(d)(2) of the Reform Act is amended by striking out “section 263A(c)(5)” and inserting in lieu thereof “section 460(c)(5)”.

26 USC 460 note.

(4)(A) Paragraph (3) of section 460(b) of the 1986 Code is amended by adding at the end thereof the following new sentences:

“For purposes of the preceding sentence, any amount received or accrued after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was received or accrued) such amount to its value as of the completion of the contract. The taxpayer may elect with respect to any contract to have the preceding sentence not apply to such contract.”

(B) Subparagraph (B) of section 460(b)(2) of the 1986 Code is amended by striking out “completion of the contract” and inserting in lieu thereof “completion of the contract (or, with respect to any amount received or accrued after completion of the contract, when such amount is so received or accrued)”.

(d) **AMENDMENT RELATED TO SECTION 805 OF THE REFORM ACT.**—

(1) Section 166(d)(1)(A) of the 1986 Code is amended by striking out “subsections (a) and (c)” and inserting in lieu thereof “subsection (a)”.

(2) Subsection (b) of section 805 of the Reform Act is amended by inserting “, as amended by section 901(d)(4),” after “Section 166”.

26 USC 166.

(3) Subsection (a) of section 582 of the 1986 Code is amended by striking out “subsections (a), (b), and (c) of section 166” and inserting in lieu thereof “subsections (a) and (b) of section 166”.

(e) **AMENDMENTS RELATED TO SECTION 806 OF THE REFORM ACT.**—

(1)(A) Clause (i) of section 706(b)(1)(B) of the 1986 Code is amended to read as follows:

“(i) the majority interest taxable year (as defined in paragraph (4)),”.

(B) Paragraph (4) of section 706(b) of the 1986 Code is amended to read as follows:

“(4) MAJORITY INTEREST TAXABLE YEAR; LIMITATION ON REQUIRED CHANGES.—

“(A) MAJORITY INTEREST TAXABLE YEAR DEFINED.—For purposes of paragraph (1)(B)(i)—

“(i) IN GENERAL.—The term ‘majority interest taxable year’ means the taxable year (if any) which, on each testing day, constituted the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

“(ii) TESTING DAYS.—The testing days shall be—

“(I) the 1st day of the partnership taxable year (determined without regard to clause (i)), or

“(II) the days during such representative period as the Secretary may prescribe.

“(B) FURTHER CHANGE NOT REQUIRED FOR 3 YEARS.—

Except as provided in regulations necessary to prevent the avoidance of this section, if, by reason of paragraph (1)(B)(i), the taxable year of a partnership is changed, such partnership shall not be required to change to another taxable year for either of the 2 taxable years following the year of change.”

(2) Clause (iii) of section 706(b)(1)(B) of the 1986 Code is amended by striking out “or such other period as the Secretary may prescribe in regulations” and inserting in lieu thereof “unless the Secretary by regulations prescribes another period”.

(3) Section 706(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) APPLICATION WITH OTHER SECTIONS.—Except as provided in regulations, for purposes of determining the taxable year to which a partnership is required to change by reason of this subsection, changes in taxable years of other persons required by this subsection, section 441(i), section 584(h), section 645, or section 1378(a) shall be taken into account.”

(4) Paragraph (2) of section 441(i) of the 1986 Code (defining personal service corporation) is amended by adding at the end thereof the following:

“A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation.”

(5)(A) Section 584 of the 1986 Code (relating to common trust funds) is amended by adding at the end thereof the following new subsection:

“(h) TAXABLE YEAR OF COMMON TRUST FUND.—For purposes of this subtitle, the taxable year of any common trust fund shall be the calendar year.”

26 USC 584 note.

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 806 of the Reform Act, except that section 806(e)(1) shall be applied by substituting “December 31, 1987” for “December 31, 1986”. For purposes of section 806(e)(2) of the Reform Act—

(i) a participant in a common trust fund shall be treated in the same manner as a partner, and

(ii) subparagraph (C) thereof shall be applied by substituting "December 31, 1987" for "December 31, 1986" and as if it did not contain the election to include all income in the short taxable year.

(6) Section 806(c)(2) of the Reform Act is amended by striking out "Section 267(a)" and inserting in lieu thereof "Section 267(a)(2)". 26 USC 267.

(7) Subparagraph (C) of section 806(e)(2) of the Reform Act is amended— 26 USC 1378 note.

(A) by striking out "(including such short taxable year)", and

(B) by striking out "short taxable year" the second place it appears and inserting in lieu thereof "the partner's or shareholder's taxable year with or within which the partnership's or S corporation's short taxable year ends".

(8) Section 806(e)(2) of the Reform Act is amended—

(A) by striking out "any taxable year" and inserting in lieu thereof "the taxpayer's first taxable year beginning after December 31, 1986", and

(B) by striking out "taxpayer" each place it appears and inserting in lieu thereof "partnership, S corporation, or personal service corporation".

(9) Nothing in section 806 of the Reform Act or in any legislative history relating thereto shall be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year. 26 USC 1378 note.

(10) Subsection (e) of section 806 of the Reform Act is amended by adding at the end thereof the following new paragraph: 26 USC 1378 note.

"(3) BASIS, ETC. RULES.—

"(A) BASIS RULE.—The adjusted basis of any partner's interest in a partnership or shareholder's stock in an S corporation shall be determined as if all of the income to be taken into account ratably in the 4 taxable years referred to in paragraph (2)(C) were included in gross income for the 1st of such taxable years.

"(B) TREATMENT OF DISPOSITIONS.—If any interest in a partnership or stock in an S corporation is disposed of before the last taxable year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent taxable years in the spread period under paragraph (2)(C) and attributable to the interest or stock disposed of shall be included in gross income for the taxable year in which the disposition occurs. For purposes of the preceding sentence, the term 'spread period' means the period consisting of the 4 taxable years referred to in paragraph (2)(C)."

(f) AMENDMENTS RELATED TO SECTION 811 OF THE REFORM ACT.—

(1) Paragraph (4) of section 453C(b) of the 1986 Code is amended—

(A) by striking out "at any time during" and inserting in lieu thereof "as of the close of", and

(B) by striking out "as of the close of such taxable year in lieu" and inserting in lieu thereof "as of the close of such taxable year (determined by not taking into account any indebtedness described in paragraph (3)(B)) in lieu"

(2) So much of paragraph (2) of section 453C(d) of the 1986 Code as precedes subparagraph (A) is amended to read as follows:

“(2) EXCESS ALLOCABLE INSTALLMENT INDEBTEDNESS.—If the allocable installment indebtedness for any taxable year exceeds the amount which may be allocated under paragraph (1) to applicable installment obligations arising in (and outstanding as of the close of) such taxable year, such excess shall—”.

(3) Subparagraph (A) of section 453C(e)(1) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“Such term also includes any obligation held by any person if the basis of such obligation in the hands of such person is determined (in whole or in part) by reference to the basis of such obligation in the hands of another person and such obligation was an applicable installment obligation in the hands of such other person.”

(4) Paragraph (2) of section 453C(e) of the 1986 Code (relating to aggregation rules) is amended by striking out “For” and inserting in lieu thereof “Except as provided in regulations, for”.

(5) Subparagraph (B) of section 453C(e)(4) of the 1986 Code is amended by striking out “or (3)”.

26 USC 453C
note.

(6) Paragraph (4) of section 811(c) of the Reform Act is amended by striking out the second subparagraphs (D) and (E).

(7) Paragraph (5) of section 811(c) of the Reform Act is amended by striking out “October 23, 1985” each place it appears and inserting in lieu thereof “October 23, 1984”.

(8) Section 811(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(9) SPECIAL RULES.—For purposes of section 453C of the 1986 Code (as added by subsection (a))—

“(A) REVOLVING CREDIT PLANS, ETC.—The term ‘applicable installment obligation’ shall not include any obligation arising out of any disposition or sale described in paragraph (1) or (2) of section 453(k) of such Code (as added by section 812(a)).

“(B) CERTAIN DISPOSITIONS DEEMED MADE ON FIRST DAY OF TAXABLE YEAR.—In the case of a taxpayer’s 1st taxable year ending after December 31, 1986, dispositions after February 28, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day.”

26 USC 453C
note.

(9) For purposes of applying the amendments made by this subsection and the amendments made by section 10202 of the Revenue Act of 1987, the provisions of this subsection shall be treated as having been enacted immediately before the enactment of the Revenue Act of 1987.

(g) AMENDMENTS RELATED TO SECTION 812 OF THE REFORM ACT.—
(1) Section 453 of the 1986 Code is amended by redesignating the subsection (j) added by section 812 of the Reform Act as subsection (k).

(2) Subsection (c) of section 453A of the 1986 Code (as in effect on the date before the date of the enactment of the Revenue Act of 1987) is amended by striking out “453(j)” and inserting in lieu thereof “453(k)”.

(3) Paragraph (1) of section 812(c) of the Reform Act is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraphs (2) and (3)". 26 USC 453 note.

(4) Subsection (c) of section 812 of the Reform Act is amended by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) the following new paragraph:

"(2) SALES OF STOCK, ETC.—Section 453(k)(2) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to sales after December 31, 1986, in taxable years ending after such date."

(5) Paragraph (3) of section 812(c) of the Reform Act (as so redesignated) is amended by striking out subparagraphs (B) and (C) and inserting in lieu thereof the following:

"(B) such change shall be treated as having been made with the consent of the Secretary,

"(C) the period for taking into account adjustments under section 481 of such Code by reason of such change shall be equal to 4 years, and

"(D) except as provided in paragraph (4), the amount taken into account in each of such 4 years shall be the applicable percentage (determined in accordance with the following table) of the net adjustment:

In the case of the:	The applicable percentage is:
1st taxable year	15
2nd taxable year	25
3rd taxable year	30
4th taxable year	30.

If the taxpayer's last taxable year beginning before January 1, 1987, was the taxpayer's 1st taxable year in which sales were made under a revolving credit plan, all adjustments under section 481 of such Code shall be taken into account in the taxpayer's 1st taxable year beginning after December 31, 1986."

(6) Subsection (c) of section 812 of the Reform Act is amended by adding at the end thereof the following new paragraphs:

"(4) ACCELERATION OF ADJUSTMENTS WHERE CONTRACTION IN AMOUNT OF INSTALLMENT OBLIGATIONS.—

"(A) IN GENERAL.—If the percentage determined under subparagraph (B) for any taxable year in the adjustment period exceeds the percentage which would otherwise apply under paragraph (3)(D) for such taxable year (determined after the application of this paragraph for prior taxable years in the adjustment period)—

"(i) the percentage determined under subparagraph (B) shall be substituted for the applicable percentage which would otherwise apply under paragraph (3)(D), and

"(ii) any increase in the applicable percentage by reason of clause (i) shall be applied to reduce the applicable percentage determined under paragraph (3)(D) for subsequent taxable years in the adjustment period (beginning with the 1st of such subsequent taxable years).

"(B) DETERMINATION OF PERCENTAGE.—For purposes of subparagraph (A), the percentage determined under this subparagraph for any taxable year in the adjustment period is the excess (if any) of—

“(i) the percentage determined by dividing the aggregate contraction in revolving installment obligations by the aggregate face amount of such obligations outstanding as of the close of the taxpayer’s last taxable year beginning before January 1, 1987, over

“(ii) the sum of the applicable percentages under paragraph (3)(D) (as modified by this paragraph) for prior taxable years in the adjustment period.

“(C) **AGGREGATE CONTRACTION IN REVOLVING INSTALLMENT OBLIGATIONS.**—For purposes of subparagraph (B), the aggregate contraction in revolving installment obligations is the amount by which—

“(i) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxpayer’s last taxable year beginning before January 1, 1987, exceeds

“(ii) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxable year involved.

“(D) **REVOLVING INSTALLMENT OBLIGATIONS.**—For purposes of this paragraph, the term ‘revolving installment obligations’ means installment obligations arising under a revolving credit plan.

“(E) **TREATMENT OF CERTAIN OBLIGATIONS DISPOSED OF ON OR BEFORE OCTOBER 26, 1987.**—For purposes of subparagraphs (B)(i) and (C)(i), in determining the aggregate face amount of revolving installment obligations outstanding as of the close of the taxpayer’s last taxable year beginning before January 1, 1987, there shall not be taken into account any obligation—

“(i) which was disposed of to an unrelated person on or before October 26, 1987, or

“(ii) was disposed of to an unrelated person on or after such date pursuant to a binding written contract in effect on October 26, 1987, and at all times thereafter before such disposition.

For purposes of the preceding sentence, the term ‘unrelated person’ means any person who is not a related person (as defined in section 453(g) of the Internal Revenue Code of 1986).

“(5) **LIMITATION ON LOSSES FROM SALES OF OBLIGATIONS UNDER REVOLVING CREDIT PLANS.**—If 1 or more obligations arising under a revolving credit plan and taken into account under paragraph (3) are disposed of during the adjustment period, then, notwithstanding any other provision of law—

“(A) no losses from such dispositions shall be recognized, and

“(B) the aggregate amount of the adjustment for taxable years in the adjustment period (in reverse order of time) shall be reduced by the amount of such losses.

“(6) **ADJUSTMENT PERIOD.**—For purposes of paragraphs (4) and (5), the adjustment period is the 4-year period under paragraph (3).”

(h) **AMENDMENT RELATED TO SECTION 821 OF THE REFORM ACT.**—Section 821(b)(3) of the Reform Act is amended by adding at the end thereof the following new sentence: “The preceding sentence shall also apply to any taxable year beginning after August 16, 1986, and

re January 1, 1987, if the taxpayer treated such income in the manner for the taxable year preceding such taxable year."

AMENDMENT RELATED TO SECTION 822 OF THE REFORM ACT.—Paragraph (1) of section 703(b) of the 1986 Code is amended by striking out "or (d)(4)".

AMENDMENTS RELATED TO SECTION 824 OF THE REFORM ACT.—

(1) Section 6501(o) of the 1986 Code which relates to cross references is amended by striking out paragraph (3).

(2) Paragraph (4) of section 824(c) of the Reform Act is amended by striking out "an indemnity agreement" and inserting in lieu thereof "an underwriting agreement".

26 USC 118 note.

1009. AMENDMENTS RELATED TO TITLE IX OF THE REFORM ACT.

AMENDMENTS RELATED TO SECTION 901 OF THE REFORM ACT.—

(1) Subparagraph (C) of section 46(e)(4) of the 1986 Code is amended by adding at the end thereof the following new sentences: "Notwithstanding the preceding provisions of this subparagraph, any such election shall terminate effective with respect to the 1st taxable year of the organization making such election which begins after 1986 and during which such organization (or any successor organization) was not at any time the lessee under any lease of regular investment tax credit property. For purposes of the preceding sentence, the term 'regular investment tax credit property' means any section 38 property if the regular percentage applied to such property and the amount of qualified investment with respect to such property would have been reduced under paragraph (1) but for an election under this subparagraph."

(2)(A) Paragraph (5) of section 585(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) **ELECTION MADE BY EACH MEMBER.**—In the case of a parent-subsidiary controlled group, any election under this section shall be made separately by each member of such group."

(B) Subclause (I) of section 585(c)(3)(A)(iii) of the 1986 Code is amended by striking out "or such greater amount as the taxpayer may designate" and inserting in lieu thereof "or such higher percentage of such net amount as the taxpayer may elect".

(C) Clause (ii) of section 585(c)(3)(B) of the 1986 Code is amended by striking out "designates an amount" and inserting in lieu thereof "elects a higher percentage".

(3) Paragraph (4) of section 585(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

the amount of the reserve referred to in subparagraph (B) as of close of any taxable year exceeds the outstanding balance (as of any time) of the loans referred to in subparagraph (B), such excess shall be included in gross income for such taxable year."

AMENDMENTS RELATED TO SECTION 902 OF THE REFORM ACT.—

(1) Paragraph (3) of section 902(f) of the Reform Act is amended—

(A) in subparagraph (F), by striking out "distribution company" and inserting in lieu thereof "distribution facility",

(B) in subparagraph (L), by striking out "waterfront project" and inserting in lieu thereof "2 Festival Market

State listing.
26 USC 265 note.

Place projects at Union Pier Terminal and 1 project at the Remount Road Container Yard, State Pier No. 15 at North Charleston Terminal",

(C) in subparagraph (M), by striking out "Pontalba" and inserting in lieu thereof "Pontalba",

(D) in subparagraph (P), by striking out "Birmingham, Alabama," and inserting in lieu thereof "Homewood, Alabama, the", and

(E) by adding at the end thereof the following new subparagraphs:

"(T) Bellows Falls, Vermont—building project.

"(U) East Broadway Project, Louisville, Kentucky.

"(V) O.K. Industries, Oklahoma."

SC 265 note.

(2) Paragraph (4) of section 902(f) of the Reform Act is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

(3)(A) Paragraph (3) of section 265(b) of the 1986 Code is amended to read as follows:

"(3) EXCEPTION FOR CERTAIN TAX-EXEMPT OBLIGATIONS.—

"(A) IN GENERAL.—Any qualified tax-exempt obligation acquired after August 7, 1986, shall be treated for purposes of paragraph (2) and section 291(e)(1)(B) as if it were acquired on August 7, 1986.

"(B) QUALIFIED TAX-EXEMPT OBLIGATION.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the term 'qualified tax-exempt obligation' means a tax-exempt obligation—

"(I) which is issued after August 7, 1986, by a qualified small issuer,

"(II) which is not a private activity bond (as defined in section 141), and

"(III) which is designated by the issuer for purposes of this paragraph.

"(ii) CERTAIN BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of clause (i)(II), there shall not be treated as a private activity bond—

"(I) any qualified 501(c)(3) bond (as defined in section 145), or

"(II) any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A)).

"(C) QUALIFIED SMALL ISSUER.—

"(i) IN GENERAL.—For purposes of subparagraph (B), the term 'qualified small issuer' means, with respect to obligations issued during any calendar year, any issuer if the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii)) which will be issued by such issuer during such calendar year does not exceed \$10,000,000.

“(ii) OBLIGATIONS NOT TAKEN INTO ACCOUNT IN DETERMINING STATUS AS QUALIFIED SMALL ISSUER.—For purposes of clause (i), an obligation is described in this clause if such obligation is—

“(I) a private activity bond (other than a qualified 501(c)(3) bond, as defined in section 145),

“(II) an obligation to which section 141(a) does not apply by reason of section 1312, 1313, 1316(g), or 1317 of the Tax Reform Act of 1986 and which would (if issued on August 15, 1986) have been an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of such Act) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exception from such definition other than section 103(o)(2)(A)), or

“(III) an obligation issued to refund (other than to advance refund within the meaning of section 149(d)(5)) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation.

“(iii) ALLOCATION OF AMOUNT OF ISSUE IN CERTAIN CASES.—In the case of an issue under which more than 1 governmental entity receives benefits, if—

“(I) all governmental entities receiving benefits from such issue irrevocably agree (before the date of issuance of the issue) on an allocation of the amount of such issue for purposes of this subparagraph, and

“(II) such allocation bears a reasonable relationship to the respective benefits received by such entities,

then the amount of such issue so allocated to an entity (and only such amount with respect to such issue) shall be taken into account under clause (i) with respect to such entity.

(D) LIMITATION ON AMOUNT OF OBLIGATIONS WHICH MAY BE DESIGNATED.—

“(i) IN GENERAL.—Not more than \$10,000,000 of obligations issued by an issuer during any calendar year may be designated by such issuer for purposes of this paragraph.

“(ii) CERTAIN REFUNDINGS OF DESIGNATED OBLIGATIONS DEEMED DESIGNATED.—Except as provided in clause (iii), in the case of a refunding (or series of refundings) of a qualified tax-exempt obligation, the refunding obligation shall be treated as a qualified tax-exempt obligation (and shall not be taken into account under clause (i)) if—

“(I) the refunding obligation was not taken into account under subparagraph (C) by reason of clause (ii)(III) thereof,

“(II) the average maturity date of the refunding obligations issued as part of the issue of which such refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue, and

“(III) the refunding obligation has a maturity date which is not later than the date which is 30 years after the date the original qualified tax-exempt obligation was issued.

Subclause (II) shall not apply if the average maturity of the issue of which the original qualified tax-exempt obligation was a part (and of the issue of which the obligations to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

“(iii) CERTAIN OBLIGATIONS MAY NOT BE DESIGNATED OR DEEMED DESIGNATED.—No obligation issued as part of an issue may be designated under this paragraph (or may be treated as designated under clause (ii)) if—

“(I) any obligation issued as part of such issue is issued to refund another obligation, and

“(II) the aggregate face amount of such issue exceeds \$10,000,000.

“(E) AGGREGATION OF ISSUERS.—For purposes of subparagraphs (C) and (D)—

“(i) an issuer and all entities which issue obligations on behalf of such issuer shall be treated as 1 issuer,

“(ii) all obligations issued by a subordinate entity shall, for purposes of applying subparagraphs (C) and (D) to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

“(iii) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of subparagraph (C) or (D) and all entities benefiting thereby shall be treated as 1 issuer.

“(F) TREATMENT OF COMPOSITE ISSUES.—In the case of an obligation which is issued as part of a direct or indirect composite issue, such obligation shall not be treated as a qualified tax-exempt obligation unless—

“(i) the requirements of this paragraph are met with respect to such composite issue (determined by treating such composite issue as a single issue), and

“(ii) the requirements of this paragraph are met with respect to each separate lot of obligations which are part of the issue (determined by treating each such separate lot as a separate issue).”

(B) In the case of any obligation issued after August 7, 1986, and before January 1, 1987, the time for making a designation with respect to such obligation under section 265(b)(3)(B)(iii) of the 1986 Code shall not expire before January 1, 1989.

(C) If—

(i) an obligation is issued on or after January 1, 1986, and on or before August 7, 1986,

(ii) when such obligation was issued, the issuer made a designation that it intended to qualify under section 802(e)(3) of H.R. 3838 of the 99th Congress as passed by the House of Representatives, and

(iii) the issuer makes an election under this subparagraph with respect to such obligation, for purposes of section 265(b)(3) of the 1986 Code, such obligation shall be treated as issued on August 8, 1986.

(D)(i) Except as provided in clause (ii), the following provisions of section 265(b)(3) of the 1986 Code (as amended by this subparagraph (A)) shall apply to obligations issued after June 30, 1987:

(I) subparagraph (C)(ii)(III),

(II) clauses (ii) and (iii) of subparagraph (D), and

(III) subparagraphs (E) and (F).

(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the provisions referred to in clause (i) shall apply to such issuer as if included in the amendments made by section 902(a) of the Tax Reform Act of 1986.

(4) Subparagraph (B) of section 291(e)(1) of the 1986 Code is amended by redesignating the clause (iv) added by section 902(c)(2) of the Reform Act as clause (v).

(5) Clause (i) of section 291(e)(1)(B) of the 1986 Code is amended by striking out "section 582(a)(2)" and inserting in lieu thereof "section 585(a)(2)".

(6) Paragraph (1) of section 902(e) of the Reform Act is amended by striking out "Section 163(h)(12)" and inserting in lieu thereof "Section 163(i)(2) (as redesignated by section 511(b) of this Act)". 26 USC 163.

(7) Paragraph (4) of section 902(f) of the Reform Act is amended— 26 USC 265 note.

(A) by inserting "and qualified 501(c)(3) bonds designated by such Governor for purposes of this paragraph," after "1987)," and

(B) by striking out "subparagraph" in the last sentence and inserting in lieu thereof "paragraph".

(c) AMENDMENTS RELATED TO SECTION 903 OF THE REFORM ACT.—

(1) Paragraph (1) of section 172(b) of the 1986 Code is amended by redesignating subparagraphs (L) and (M) as subparagraphs (K) and (L), respectively.

(2) Subparagraph (A) of section 172(b)(1) of the 1986 Code is amended by striking out "Except" and all that follows down through "a net operating loss" and inserting in lieu thereof "Except as otherwise provided in this paragraph, a net operating loss".

(3) Subparagraph (B) of section 172(b)(1) of the 1986 Code is amended to read as follows:

"(B) Except as otherwise provided in this paragraph, a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss."

(d) AMENDMENTS RELATED TO SECTION 905 OF THE REFORM ACT.—

(1) Subsection (l) of section 165 of the 1986 Code is amended by redesignating paragraph (6) as paragraph (7) and by striking out paragraph (5) and inserting in lieu thereof the following:

"(5) ELECTION TO TREAT AS ORDINARY LOSS.—

"(A) IN GENERAL.—In lieu of any election under paragraph (1), the taxpayer may elect to treat the amount referred to in paragraph (1) for the taxable year as an ordinary loss described in subsection (c)(2) incurred during the taxable year.

"(B) LIMITATIONS.—

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banking.

“(i) **DEPOSIT MAY NOT BE FEDERALLY INSURED.**—No election may be made under subparagraph (A) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

“(ii) **DOLLAR LIMITATION.**—With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under subparagraph (A) may be made by the taxpayer for any taxable year shall not exceed \$20,000 (\$10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

“(6) **ELECTION.**—Any election by the taxpayer under this subsection for any taxable year—

“(A) shall apply to all losses for such taxable year of the taxpayer on deposits in the institution with respect to which such election was made, and

“(B) may be revoked only with the consent of the Secretary.”

26 USC 451 note.

(2) Paragraph (1) of section 905(c) of the Reform Act is amended to read as follows:

“(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1981, and, except as provided in paragraph (2), the amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1982.”

(3) The subsection (f) of section 451 of the 1986 Code which was added by section 905(b) of the 1986 Reform Act is redesignated as subsection (g).

26 USC 165 note.

(4) If on the date of the enactment of this Act (or at any time before the date 1 year after such date of enactment) credit or refund of any overpayment of tax attributable to amendments made by section 905 of the Reform Act or by this subsection (or the assessment of any underpayment of tax so attributable) is barred by any law or rule of law—

(A) credit or refund of any such overpayment may nevertheless be made if claim therefore is filed before the date 1 year after such date of enactment, and

(B) assessment of any such underpayment may nevertheless be made if made before the date 1 year after such date of enactment.

SEC. 1010. AMENDMENTS RELATED TO TITLE X OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1011 OF THE REFORM ACT.—

(1) Paragraph (1) of section 813(a) of the 1986 Code (relating to foreign life insurance companies) is amended by striking out “the special life insurance company deduction and”.

(2) Paragraph (1) of section 1011(d) of the Reform Act is amended—

(A) by striking out “any bond” and inserting in lieu thereof “any market discount bond (as defined in section 1278 of the Internal Revenue Code of 1986)”,

26 USC 801 note.

(B) by striking out “28 percent” and inserting in lieu thereof “31.6 percent”, and

(C) by adding at the end thereof the following new sentence: “The preceding sentence shall apply only if the tax determined under the preceding sentence is less than the tax which would otherwise be imposed.”

(3) Paragraph (2) of section 1011(d) of the Reform Act is amended to read as follows: 26 USC 801 note.

“(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term ‘qualified life insurance company’ means any life insurance company subject to tax under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986.”

AMENDMENTS RELATED TO SECTION 1012 OF THE REFORM ACT.—

(1) Clause (iv) of section 1012(c)(4)(C) of the Reform Act is amended to read as follows: 26 USC 833 note.

“(iv) dental benefit coverage provided by a Delta Dental Plans Association organization through contracts with independent professional service providers so long as the provision of such coverage is the principal activity of such organization.” Health care professionals.

(2) Clause (ii) of section 1012(c)(4)(C) of the Reform Act is amended by striking out “Association” and inserting in lieu thereof “Plan”.

(3) The Secretary of the Treasury or his delegate may prescribe rules providing proper adjustments for taxpayers which become subject to subchapter L of chapter 1 of the 1986 Code by reason of the amendments made by section 1012 of the Reform Act with respect to short taxable years which begin during 1987 by reason of section 843 of such Code. 26 USC 833 note.

(4)(A) Paragraph (3) of section 501(m) of the 1986 Code is amended by striking out “and” at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof “, and”, and by adding at the end hereof the following new subparagraph:

“(E) charitable gift annuities.”

(B) Subsection (m) of section 501 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) CHARITABLE GIFT ANNUITY.—For purposes of paragraph (3)(E), the term ‘charitable gift annuity’ means an annuity if—

“(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

“(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).”

AMENDMENTS RELATED TO SECTION 1021 OF THE REFORM ACT.—

(1)(A) Subparagraph (C) of section 832(b)(7) of the 1986 Code (relating to special rules for determining premiums earned) is amended by striking out “this part” and inserting in lieu thereof “section 831(a)”. Insurance.

(B) The subparagraph heading for such subparagraph is amended by striking out “NONLIFE INSURANCE COMPANY” and inserting in lieu thereof “INSURANCE COMPANY TAXABLE UNDER SECTION 831 (a)”.

(2) Paragraph (7) of section 832(b) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

“(D) TREATMENT OF COMPANIES WHICH BECOME TAXABLE UNDER SECTION 831 (a).—

“(i) **EXCEPTION TO PHASE-IN FOR COMPANIES WHICH WERE NOT TAXABLE, ETC., BEFORE 1987.**—Subparagraph (C) of paragraph (4) shall not apply to any insurance company which, for each taxable year beginning before January 1, 1987, was not subject to the tax imposed by section 821(a) or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) by reason of being—

“(I) subject to tax under section 821(c) (as so in effect), or

“(II) described in section 501(c) (as so in effect) and exempt from tax under section 501(a).

“(ii) **PHASE-IN BEGINNING AT LATER DATE FOR COMPANIES NOT 1ST TAXABLE UNDER SECTION 831 (a) IN 1987.**—In the case of an insurance company—

“(I) which was not subject to the tax imposed by section 831(a) for its 1st taxable year beginning after December 31, 1986, by reason of being subject to tax under section 831(b), or described in section 501(c) and exempt from tax under section 501(a), and

“(II) which, for any taxable year beginning before January 1, 1987, was subject to the tax imposed by section 821(a) or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986),

subparagraph (C) of paragraph (4) shall apply beginning with the 1st taxable year beginning after December 31, 1986, for which such company is subject to the tax imposed by section 831(a) and shall be applied by substituting the last day of the preceding taxable year for ‘December 31, 1986’ and the 1st day of the 7th succeeding taxable year for ‘January 1, 1993’.

“(E) TREATMENT OF CERTAIN RECIPROCAL INSURERS.—In the case of a reciprocal (within the meaning of section 835(a)) which reports (as required by State law) on its annual statement reserves on unearned premiums net of premium acquisition expenses—

“(i) subparagraph (B) of paragraph (4) shall be applied by treating unearned premiums as including an amount equal to such expenses, and

“(ii) appropriate adjustments shall be made under subparagraph (c) of paragraph (4) to reflect the amount by which—

“(I) such reserves at the close of the most recent taxable year beginning before January 1, 1987, are greater or less than,

“(II) 80 percent of the sum of the amount under subclause (I) plus such premium acquisition expenses,”

(3) Paragraph (5) of section 832(e) of the 1986 Code is amended by striking out “and” at the end of subparagraph (A) and by striking out the period at the end of subparagraph (B) and inserting in lieu thereof a comma.

(d) **AMENDMENTS RELATED TO SECTION 1022 OF THE REFORM ACT.**—

(1) Section 832 of the 1986 Code (defining insurance company taxable income) is amended by adding at the end thereof the following new subsection:

(g) **DIVIDENDS WITHIN GROUP.**—In the case of an insurance company subject to tax under section 831(a) filing or required to file a consolidated return under section 1501 with respect to any affiliated up for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group were filing a consolidated return.”

(2) Subclause (II) of section 832(b)(5)(B)(ii) of the 1986 Code (relating to losses incurred) is amended by inserting “(directly or indirectly)” after “attributable”.

(3) For purposes of section 832(b)(5)(C)(i) of the 1986 Code, any stock or obligation acquired on or after August 8, 1986, by an insurance company subject to the tax imposed by section 831 of the 1986 Code (hereinafter in this paragraph referred to as the “acquiring company”) from another insurance company so subject (hereinafter in this paragraph referred to as the “transferor company”) shall be treated as acquired on the date on which such stock or obligation was acquired by the transferor company if—

26 USC 832 note.

(A) the transferor company acquired such stock or obligation before August 8, 1986, and

(B) at all times after the date on which such stock or obligation was acquired by the transferor company and before the date of the acquisition by the acquiring company, the transferor company and the acquiring company were members of the same affiliated group filing a consolidated return.

For purposes of the preceding sentence, the date on which the stock or obligation was acquired by the transferor company shall be determined with regard to any prior application of the preceding sentence. For purposes of this paragraph, if the acquiring corporation or transferor corporation was a party to a reorganization described in section 368(a)(1)(F) of the 1986 Code, any reference to such corporation shall include a reference to any predecessor thereof involved in such reorganization.

AMENDMENTS RELATED TO SECTION 1023 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 846(f)(6) of the 1986 Code (relating to special rule for certain accident and health insurance lines of business) is amended by striking out “paid during the year” and inserting in lieu thereof “paid in the middle of the year”.

(2) Subsection (g) of section 846 of the 1986 Code is amended by striking out “and” at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new paragraph:

“(3) regulations providing appropriate adjustments in the application of this section to a taxpayer having a taxable year which is not the calendar year.”

(3) Subsection (e) of section 1023 of the Reform Act (relating to discounting of unpaid losses and certain unpaid expenses) is amended by adding at the end thereof the following new paragraph:

26 USC 846 note.

“(4) APPLICATION OF FRESH START TO COMPANIES WHICH BECOME SUBJECT TO SECTION 831(a) TAX IN LATER TAXABLE YEAR.—If—

“(A) an insurance company was not subject to tax under section 831(a) of the Internal Revenue Code of 1986 for its 1st taxable year beginning after December 31, 1986, by reason of being—

“(i) subject to tax under section 831(b) of such Code,

or

“(ii) described in section 501(c) of such Code and exempt from tax under section 501(a) of such Code, and

“(B) such company becomes subject to tax under such section 831(a) for any later taxable year,

paragraph (2) and subparagraphs (A) and (C) of paragraph (3) shall be applied by treating such later taxable year as its 1st taxable year beginning after December 31, 1986, and by treating the calendar year in which such later taxable year begins as 1987; and paragraph (3)(B) shall not apply.”

(f) AMENDMENTS RELATED TO SECTION 1024 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 831(b)(2) of the 1986 Code (relating to companies to which alternative tax applies) is amended by adding at the end thereof the following new sentence:

“The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary.”

(2) Subsection (a) of section 835 of the 1986 Code (relating to election by reciprocal) is amended by striking out “section 821(a)” and inserting in lieu thereof “section 831(a)”.

(3) Subsection (f) of section 835 of the 1986 Code is amended by striking out “subsection (e)” and inserting in lieu thereof “subsection (d)”.

(4) Paragraph (6) of section 243(b) of the 1986 Code (relating to special rules for insurance companies) is amended by striking out “or 821”.

(5) Subsection (c) of section 543 of the 1986 Code (relating to gross income of insurance companies other than life or mutual) is amended—

(A) by striking out “OR MUTUAL” in the heading and inserting in lieu thereof “INSURANCE COMPANIES”, and

(B) by striking out “life or mutual” in the text and inserting in lieu thereof “a life insurance company”.

(6) Subsection (g) of section 816 of the 1986 Code (relating to burial and funeral benefit insurance companies) is amended by striking out “section 821 or”.

(7) The table of sections for part II of subchapter L of chapter 1 of the 1986 Code (relating to other insurance companies) is amended by striking out the item relating to section 831 and inserting in lieu thereof the following new item:

“Sec. 831. Tax on insurance companies other than life insurance companies.”

USC 831 note.

(8) Paragraph (1) of section 1024(d) of the Reform Act is amended by adding at the end thereof the following new sentence: “In the case of a company taxable under section 831(b) of the Internal Revenue Code of 1986 (as amended by subsection

(a)), any amount included in gross income under this paragraph shall be treated as gross investment income.”

(9) Section 831(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) LIMITATION ON USE OF NET OPERATING LOSSES.—For purposes of this part, except as provided in section 844, a net operating loss (as defined in section 172) shall not be carried—

“(A) to or from any taxable year for which the insurance company is not subject to the tax imposed by subsection (a), or

“(B) to any taxable year if, between the taxable year from which such loss is being carried and such taxable year, there is an intervening taxable year for which the insurance company was not subject to the tax imposed by subsection (a).”

AMENDMENTS RELATED TO SECTION 1031 OF THE REFORM ACT.—

(1) Paragraph (1) of section 1031(a) of the Reform Act is amended by inserting “(whether made in a lump sum or a series of substantially equal payments over a period of not more than 6 years)” after “any initial payment”.

26 USC 832 note.

(2) Paragraph (2) of section 1031(a) of the Reform Act is amended by striking out “initial payment” each place it appears and inserting in lieu thereof “initial payment referred to in paragraph (1)”.

(3) Paragraph (2) of section 1031(a) of the Reform Act is amended by striking out “this title” each place it appears and inserting in lieu thereof “the Internal Revenue Code of 1986”.

SPECIAL RULE FOR MUTUAL LIFE INSURANCE COMPANY.—

(1) IN GENERAL.—Paragraph (2) of section 217(i) of the Tax Reform Act of 1984 is amended to read as follows:

26 USC 816 note.

“(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1954 (relating to phaseout of small life insurance company deduction).”

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

26 USC 816 note.

(3) REVENUE LOSS LIMITED.—The decrease in the amount of Federal revenue by reason of the amendment made by this subsection shall not exceed \$300,000 per taxable year.

26 USC 816 note.

DELAY IN EFFECTIVE DATE FOR DIVERSIFICATION REQUIREMENTS WITH RESPECT TO ACCOUNTS FOR CERTAIN IMMEDIATE ANNUITIES.—Section 817(h) of the 1986 Code shall not apply until January 1, 1989 in respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

26 USC 817 note.

(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

(2) such contract was outstanding on September 12, 1986, and

(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(j) TREATMENT OF ALTERNATIVE MINIMUM TAX WITH RESPECT TO SHAREHOLDERS SURPLUS ACCOUNT.—

(1) Paragraph (2) of section 815(c) of the 1986 Code (relating to shareholders surplus account) is amended by adding at the end thereof the following new sentence:

“If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3).”

26 USC 815 note.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

(k) TREATMENT OF CERTAIN ITEMS AS NOT INTEREST FOR SOURCE RULES, ETC.—Subsection (f) of section 818 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) **ITEMS DESCRIBED IN SECTION 807(C) TREATED AS NOT INTEREST FOR SOURCE RULES, ETC.**—For purposes of part I of subchapter N, items described in any paragraph of section 807(c) shall be treated as amounts which are not interest.”

SEC. 1011. AMENDMENTS RELATED TO PARTS I AND II OF SUBTITLE A OF TITLE XI OF THE REFORM ACT.**(a) AMENDMENT RELATED TO SECTION 1101 OF THE REFORM ACT.—**

(1) Paragraph (4) of section 219(g) of the 1986 Code (relating to special rule for married individuals filing separately) is amended to read as follows:

“(4) **SPECIAL RULE FOR MARRIED INDIVIDUALS FILING SEPARATELY AND LIVING APART.**—A husband and wife who—

“(A) file separate returns for any taxable year, and

“(B) live apart at all times during such taxable year, shall not be treated as married individuals for purposes of this subsection.”

26 USC 219 note.

(2)(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1987.

(B) A taxpayer may elect to have the amendment made by paragraph (1) apply to any taxable year beginning in 1987.

(b) AMENDMENTS RELATED TO SECTION 1102 OF THE REFORM ACT.—

(1) Sections 408(d)(2)(C) and 408(o)(4)(B)(iv) of the 1986 Code are each amended by striking out “with or within which the taxable year ends” and inserting in lieu thereof “in which the taxable year begins”.

(2)(A) Section 408(d)(4) of the 1986 Code (relating to excess contributions returned before due date of return) is amended by striking out “to the extent that such contribution exceeds the amount allowable as a deduction under section 219”.

(B) Section 408(d)(4) of the 1986 Code is amended—

(i) by striking out “excess” each place it appears, and

(ii) by striking out “EXCESS CONTRIBUTIONS” in the heading and inserting in lieu thereof “CONTRIBUTIONS”.

(3) Sections 408(d)(5) and 4973(b) of the 1986 Code are each amended by striking out all that follows “section 219” in the last sentence thereof and inserting in lieu thereof “shall be computed without regard to section 219(g).”.

(4)(A) Section 6693(b) of the 1986 Code (relating to overstatement of designated nondeductible contributions) is amended to read as follows:

PENALTIES RELATING TO NONDEDUCTIBLE CONTRIBUTIONS.—
“(1) OVERSTATEMENT OF DESIGNATED NONDEDUCTIBLE CONTRIBUTIONS.—Any individual who—

“(A) is required to furnish information under section 408(o)(4) as to the amount of designated nondeductible contributions made for any taxable year, and

“(B) overstates the amount of such contributions made for such taxable year,

shall pay a penalty of \$100 for each such overstatement unless it is shown that such overstatement is due to reasonable cause.

“(2) FAILURE TO FILE FORM.—Any individual who fails to file a form required to be filed by the Secretary under section 408(o)(4) shall pay a penalty of \$50 for each such failure unless it is shown that such failure is due to reasonable cause.”

(B)(i) The heading for section 6693 of the 1986 Code is amended by striking out “overstatement of” and inserting in lieu thereof “penalties relating to”.

(ii) The item relating to section 6693 in the table of sections or subchapter B of chapter 68 is amended by striking out “overstatement of” and inserting in lieu thereof “penalties relating to”.

AMENDMENTS RELATED TO SECTION 1105 OF THE REFORM ACT.—

(1) Section 402(g)(2)(C) of the 1986 Code (relating to taxation of distribution) is amended—

(A) by striking out “(and no tax shall be imposed under section 72(t))” in clause (i),

(B) by striking out “such excess deferral is made” in clause (ii) and inserting in lieu thereof “such income is distributed”, and

(C) by inserting at the end thereof the following new flush sentence:

“No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.”

(2) Section 402(g)(2) is amended by striking out “REQUIRED DISTRIBUTION” in the heading thereof and inserting in lieu thereof “DISTRIBUTION”.

(3) Section 402(g)(2) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(D) **PARTIAL DISTRIBUTIONS.**—If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income.”

(4) Section 402(g)(3) of the 1986 Code (defining elective deferral) is amended by striking out “paragraph” and inserting in lieu thereof “subsection”.

(5)(A) Clause (iii) of section 402(g)(8)(A) of the 1986 Code (relating to special rule for certain organizations) is amended by inserting “(determined in the manner prescribed by the Secretary)” after “taxable years”.

(B) Section 402(g)(8) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(D) **YEARS OF SERVICE.**—For purposes of this paragraph, the term ‘years of service’ has the meaning given such term by section 403(b).”

(6)(A) Section 402(g) of the 1986 Code, as added by section 852(b)(3)(A) of the Reform Act, is redesignated as subsection (i).

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crime.

26 USC 402 note.

(B) Section 402(g) of the 1986 Code, as added by section 1854(f)(2) of the Reform Act, is redesignated as subsection (j).

(C) Section 1854(f)(4)(C) of the Reform Act is amended by striking out "section 402(g)" and inserting in lieu thereof "section 402(j)".

(7)(A) Section 401(a) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(30) **LIMITATIONS ON ELECTIVE DEFERRALS.**—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year."

(B) Section 403(b)(1) of the 1986 Code is amended by striking out "and" at the end of subparagraph (C), by inserting "and" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30)."

(C) Subparagraph (A) of section 408(k)(6) of the 1986 Code, as amended by subsection (f)(1), is amended by adding at the end thereof the following new clause:

"(iv) **LIMITATIONS ON ELECTIVE DEFERRALS.**—Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met."

(D) Subparagraph (D) of section 501(c)(18) of the 1986 Code is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by inserting after clause (iii) the following new clause:

"(iv) the requirements of section 401(a)(30) are met."

26 USC 401 note.

(E)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to plan years beginning after December 31, 1987.

(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act, the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(II) January 1, 1989.

26 USC 402 note.

(8) Section 1105(c)(2)(A) of the Reform Act is amended by striking out "the last of such collective bargaining agreements" and inserting in lieu thereof "such agreement".

(9) Section 1105(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(6) **REPORTING REQUIREMENTS.**—The amendments made by subsection (b) shall apply to calendar years beginning after December 31, 1986."

10) Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 2(g) of the Internal Revenue Code of 1986. 26 USC 402 note.

11) Section 402(g)(3) of the 1986 Code is amended by inserting at the end thereof the following new sentence: "An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations." Wages.

12) Subparagraph (A) of section 403(b)(12) of the 1986 Code is amended by inserting after clause (ii) the following new sentence: Wages.

"For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations."

AMENDMENTS RELATED TO SECTION 1106 OF THE REFORM ACT.—

1) Section 404(l) of the 1986 Code (relating to limitation on amount of compensation which may be taken into account) is amended by adding at the end thereof the following new sentence: "For purposes of clause (i), (ii), or (iii) of subsection (1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect."

2) Section 415(b)(5)(D) of the 1986 Code (relating to application to changes in benefit structures) is amended by striking out this paragraph" and inserting in lieu thereof "subparagraph (D)".

3) Paragraph (2) of section 415(k) of the 1986 Code (relating to contributions to provide cost-of-living protection under defined benefit plans), as added by section 1106(c) of the Reform Act, is amended—

(A) by striking out "to the arrangement" in subparagraph (C)(ii) and inserting in lieu thereof "to such increase", and

(B) by striking out subparagraph (D) and inserting in lieu thereof:

"(D) **ARRANGEMENT ELECTIVE; TIME FOR ELECTION.**—An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant—

"(i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

"(ii) separates from service."

4) Sections 401(a)(17) and 404(l) of the 1986 Code are each amended by adding at the end thereof the following new sentence: "In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year."

SC 415 note.

(5) Paragraph (4) of section 1106(i) of the Reform Act is amended by striking the period at the end thereof and inserting in lieu thereof “(determined as if the amendments made by this section were in effect for such year).”.

(6) Section 415(b)(5)(B) of the 1986 Code is amended by inserting “and subsection (e)” after “paragraphs (1)(B) and (4)”.

(7) Subparagraph (A) of section 415(c)(6) of the 1986 Code is amended—

(A) by striking out “paragraph (c)(1)(A) (as adjusted for such year pursuant to subsection (d)(1))”, and inserting in lieu thereof “paragraph (1)(A)”; and

(B) by striking out “paragraph (c)(1)(A) (as so adjusted)” and inserting in lieu thereof “paragraph (1)(A)”.

(8) Sections 414(q)(1)(D) and 416(i)(1)(A)(i) of the 1986 Code are each amended by striking out “150 percent of the amount in effect under section 415(c)(1)(A)” and inserting in lieu thereof “50 percent of the amount in effect under section 415(b)(1)(A)”.

(e) AMENDMENTS RELATED TO SECTION 1107 OF THE REFORM ACT.—

(1) Section 457(c)(2) of the 1986 Code is amended by striking out “and paragraphs (2) and (3) of subsection (b)”.

(2) Section 457(d)(1)(A) of the 1986 Code (relating to distribution requirements) is amended to read as follows:

“(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

“(i) the calendar year in which the participant attains age 70½,

“(ii) when the participant is separated from service with the employer, or

“(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations).”

(3) Paragraph (7) of section 401(k) of the 1986 Code (defining rural electric cooperative plan) is amended to read as follows:

“(7) RURAL ELECTRIC COOPERATIVE PLAN.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘rural electric cooperative plan’ means any pension plan—

“(i) which is a defined contribution plan (as defined in section 414(i)), and

“(ii) which is established and maintained by a rural electric cooperative.

“(B) RURAL ELECTRIC COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term ‘rural electric cooperative’ means—

“(i) any organization which—

“(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

“(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

“(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i), and

“(iii) an organization which is a national association of organizations described in clause (i) or (ii).”

(4) Section 414(o) of the 1986 Code is amended by inserting "or any requirement under section 457" after "(n)(3)".

(5)(A) Paragraph (6) of section 818(a) of the 1986 Code (defining pension plan contracts) is amended—

- (i) by striking out "State" in subparagraph (A),
- (ii) by inserting "or any organization (other than a governmental unit) exempt from tax under this subtitle," after "foregoing," in subparagraph (B),
- (iii) by striking out "or" before "agency" in subparagraph (B), and
- (iv) by inserting ", or organization" after "instrumentality" the second place it appears in subparagraph (B).

(B) The amendments made by this paragraph shall apply to contracts issued after December 31, 1986.

26 USC 818 note.

(6) Section 1107(c)(3) of the Reform Act is amended—

26 USC 457 note.

- (A) by striking out "eligible" each place it appears, and
- (B) by inserting at the end of subparagraph (B) the following new sentence: "This subparagraph shall only apply to individuals who were covered under the plan and agreement on August 16, 1986."

(7) Paragraph (5) of section 1107(c) of the Reform Act is amended—

- (A) by striking out "to employees on August 1, 1986, of",
- (B) by striking out "a deferred compensation plan" in subparagraph (A) and inserting in lieu thereof "to employees on August 16, 1986,"
- (C) by inserting "maintaining a deferred compensation plan" after "Alabama" in subparagraph (A), and
- (D) by striking out "a deferred compensation plan" in subparagraph (B) and inserting in lieu thereof "to individuals eligible to participate on August 16, 1986, in a deferred compensation plan".

(8) Section 3121(v)(3)(A) of the 1986 Code is amended by striking out "457(e)(1)" and inserting in lieu thereof "457(f)(1)".

(9) Effective for years beginning after December 31, 1988, paragraph (9) of section 457(e) of the 1986 Code is amended by inserting "after separation from service and" before "within 60 days".

(10) Subclause (I) of section 457(d)(2)(B)(i) of the 1986 Code is amended to read as follows:

"(I) the amounts payable with respect to the participant will be paid at times specified by the Secretary which are not later than the time determined under section 401(a)(9)(G) (relating to incidental death benefits)."

AMENDMENTS RELATED TO SECTION 1108 OF THE REFORM ACT.—

Retirement.

(1) Subparagraph (A) of section 408(k)(6) of the 1986 Code (relating to salary reduction arrangements under simplified employee pensions) is amended to read as follows:

"(A) ARRANGEMENTS WHICH QUALIFY.—

"(i) IN GENERAL.—A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

“(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

“(II) to the employee directly in cash.

“(ii) 50 PERCENT OF ELIGIBLE EMPLOYEES MUST ELECT.—Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

“(iii) REQUIREMENTS RELATING TO DEFERRAL PERCENTAGE.—Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

“(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

“(II) 1.25.”

(2) Section 408(k)(6)(B) of the 1986 Code (relating to exception where more than 25 employees) is amended by inserting “who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)” after “25 employees”.

(3)(A) Section 408(k)(6)(D)(ii) of the 1986 Code (defining deferral percentage) is amended by striking out “(within the meaning of section 414(s))” and inserting in lieu thereof “(not in excess of the first \$200,000)”.

(B) Subparagraph (B) of section 408(k)(7) of the 1986 Code (defining compensation) is amended to read as follows:

“(B) COMPENSATION.—Except as provided in paragraph (2)(C), the term ‘compensation’ has the meaning given such term by section 414(s).”

(C) Subparagraph (C) of section 408(k)(3) of the 1986 Code is amended by striking out “total” before “compensation”.

(D) Section 408(k)(8) of the 1986 Code is amended by striking out “paragraph (3)(C)” and inserting in lieu thereof “paragraphs (3)(C) and (6)(D)(ii)”.

(4) Section 408(k)(6) of the 1986 Code (relating to employee may elect salary reduction arrangement) is amended by redesignating subparagraph (F) as subparagraph (G) and by inserting after subparagraph (E) the following new subparagraph:

“(F) EXCEPTION WHERE PENSION DOES NOT MEET REQUIREMENTS NECESSARY TO INSURE DISTRIBUTION OF EXCESS CONTRIBUTIONS.—This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

“(i) reporting requirements, and

“(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made

that the requirements of subparagraph (A)(iii) have been met with respect to such contributions."

(5) Section 408(d) of the 1986 Code (relating to tax treatment of distributions) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS.—

"(A) TRANSFER OR ROLLOVER OF CONTRIBUTIONS PROHIBITED UNTIL DEFERRAL TEST MET.—Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

"(B) CERTAIN EXCLUSIONS TREATED AS DEDUCTIONS.—For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) shall be treated as an amount allowable or allowed as a deduction under section 219."

(6) Subparagraph (C) of section 404(h)(1) of the 1986 Code is amended by inserting "(or during the taxable year in the case of taxable year described in subparagraph (A)(ii))" after "taxable year" the second place it appears.

(7) Section 1108(h) of the Reform Act is amended to read as follows: 26 USC 219 note.

EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1986.

"(2) INTEGRATION RULES.—Subparagraphs (D) and (E) of section 408(k)(3) of the Internal Revenue Code of 1954 (as in effect before the amendments made by this section) shall continue to apply for years beginning after December 31, 1986, and before January 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by this section) may not be integrated under such subparagraphs."

(8) Section 209(e)(8) of the Social Security Act is amended to read as follows: 42 USC 409.

"(8) under a simplified employee pension (as defined in section 408(k)(1) of such Code), other than any contributions described in section 408(k)(6) of such Code,".

(9) Section 3401(a)(12)(C) of the 1986 Code is amended—

(A) by striking out "section 219" and inserting in lieu thereof "section 402(h) (1) and (2)", and

(B) by striking out "a deduction" and inserting in lieu thereof "an exclusion".

(10) Section 408(k)(8) of the 1986 Code is amended by inserting, except that in the case of years beginning after 1988, the \$200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17) after "section 415(d)".

AMENDMENTS RELATED TO SECTION 1111 OF THE REFORM ACT.—

(1)(A) Section 401(l)(2)(B) of the 1986 Code (defining contribution percentages) is amended by inserting "by the employer" after "contributed" each place it appears.

(B) Clause (ii) of section 401(l)(3)(A) of the 1986 Code is amended by inserting "attributable to employer contributions" after "benefits".

(2) Section 401(l)(5)(C) of the 1986 Code (defining average annual compensation) is amended to read as follows:

"(C) **AVERAGE ANNUAL COMPENSATION.**—The term 'average annual compensation' means the participant's highest average annual compensation for—

"(i) any period of at least 3 consecutive years, or

"(ii) if shorter, the participant's full period of service."

(3) Section 401(l)(5)(E) of the 1986 Code (defining covered compensation) is amended—

(A) by striking out "age 65" each place it appears and inserting in lieu thereof "the social security retirement age", and

(B) by adding at the end thereof the following new clause:

"(iii) **SOCIAL SECURITY RETIREMENT AGE.**—For purposes of this subparagraph, the term 'social security retirement age' has the meaning given such term by section 415(b)(8)."

SC 401 note.

(4) Section 1111(c)(3) of the Reform Act is amended by striking out "benefits pursuant to, and individuals covered by, any such agreement in".

(h) **AMENDMENTS RELATED TO SECTION 1112 OF THE REFORM ACT.**—

(1) Section 410(b)(4)(B) of the 1986 Code (relating to exclusion of employees not meeting age and service requirements) is amended—

(A) by striking out "do not meet" and inserting in lieu thereof "not meeting", and

(B) by striking out "and".

(2) Section 410(b)(6) of the 1986 Code (relating to definitions and special rules) is amended by redesignating subparagraph (F) as subparagraph (G) and by adding after subparagraph (E) the following new subparagraph:

"(F) **EMPLOYERS WITH ONLY HIGHLY COMPENSATED EMPLOYEES.**—A plan maintained by an employer which has no employees other than highly compensated employees for any year shall be treated as meeting the requirements of this subsection for such year."

(3) Section 401(a)(26) of the 1986 Code (relating to additional participation requirements) is amended by redesignating subparagraph (F) as subparagraph (H) and by adding after subparagraph (E) the following new subparagraphs:

"(F) **SPECIAL RULE FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.**—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.

"(G) **SEPARATE LINES OF BUSINESS.**—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term 'separate line of business' has the meaning given such term by section 414(r) (without regard to paragraph (7) thereof)."

(4) Section 402(b)(2) of the 1986 Code (relating to failure to meet requirements of section 410(b)) is amended by striking out

subparagraphs (A) and (B) and inserting in lieu thereof the following:

“(A) **HIGHLY COMPENSATED EMPLOYEES.**—If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1), include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee’s investment in the contract) as of the close of such taxable year of the trust.

“(B) **FAILURE TO MEET COVERAGE TESTS.**—If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraph (1) shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

“(i) such taxable year, or

“(ii) any preceding period for which service was creditable to such employee under the plan.”

(5) Subsections (m)(4)(A) and (n)(3)(A) of section 414 of the 1986 Code are each amended by striking out “and (16)” and inserting in lieu thereof “(16), (17), and (26)”.

(6) Clause (iii) of section 1112(e)(3)(A) of the Reform Act is amended by striking out “a plan or merger” and inserting in lieu thereof “the plan”.

26 USC 401 note

(7) Section 1112(e)(2) of the Reform Act is amended by striking out “employees covered by such agreement in”.

(8) Subsection (e) of section 1112 of the Reform Act is amended by striking out paragraph (3)(C) and by adding at the end of such subsection the following new paragraph:

“(4) **SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.**—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate.”

(9) Subparagraph (B) of section 1112(e)(3) of the Reform Act is amended to read as follows:

“(B) **INTEREST RATE FOR DETERMINING ACCRUED BENEFIT OF HIGHLY COMPENSATED EMPLOYEES FOR CERTAIN PURPOSES.**—In the case of a termination, transfer, or distribution of assets of a plan described in subparagraph (A)(ii) before the 1st year to which the amendment made by subsection (b) applies—

“(i) **AMOUNT ELIGIBLE FOR ROLLOVER, INCOME AVERAGING, OR TAX-FREE TRANSFER.**—For purposes of determining any eligible amount, the present value of the accrued benefit of any highly compensated employee shall be determined by using an interest rate not less than the highest of—

“(I) the applicable rate under the plan’s method in effect under the plan on August 16, 1986,

“(II) the highest rate (as of the date of the termination, transfer, or distribution) determined under any of the methods applicable under the plan at any time after August 15, 1986, and before the termination, transfer, or distribution in calculating the present value of the accrued benefit of an employee who is not a highly compensated employee under the plan (or any other plan used in determining whether the plan meets the requirements of section 401 of the Internal Revenue Code of 1986), or

“(III) 5 percent.

“(ii) **ELIGIBLE AMOUNT.**—For purposes of clause (i), the term ‘eligible amount’ means any amount with respect to a highly compensated employee which—

“(I) may be rolled over under section 402(a)(5) of such Code,

“(II) is eligible for income averaging under section 402(e)(1) of such Code, or capital gains treatment under section 402(a)(2) or 403(a)(2) of such Code (as in effect before this Act), or

“(III) may be transferred to another plan without inclusion in gross income.

“(iii) **AMOUNTS SUBJECT TO EARLY WITHDRAWAL OR EXCESS DISTRIBUTION TAX.**—For purposes of sections 72(t) and 4980A of such Code, there shall not be taken into account the excess (if any) of—

“(I) the amount distributed to a highly compensated employee by reason of such termination or distribution, over

“(II) the amount determined by using the interest rate applicable under clause (i).

“(iv) **DISTRIBUTIONS OF ANNUITY CONTRACTS.**—If an annuity contract purchased after August 16, 1986, is distributed to a highly compensated employee in connection with such termination or distribution, there shall be included in gross income for the taxable year of such distribution an amount equal to the excess of—

“(I) the purchase price of such contract, over

“(II) the present value of the benefits payable under such contract determined by using the interest rate applicable under clause (i).

Such excess shall not be taken into account for purposes of sections 72(t) and 4980A of such Code.

“(v) **HIGHLY COMPENSATED EMPLOYEE.**—For purposes of this subparagraph, the term ‘highly compensated employee’ has the meaning given such term by section 414(q) of such Code.”

(10) Section 413(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(9) **PLANS COVERING A PROFESSIONAL EMPLOYEE.**—Notwithstanding subsection (a), in the case of a plan (and trust forming part thereof) which covers any professional employee, paragraph (1) shall be applied by substituting ‘section 410(a)’ for ‘section 410’, and paragraph (2) shall not apply.”

(11) Section 410(b)(4) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) REQUIREMENTS NOT TREATED AS BEING MET BEFORE ENTRY DATE.—An employee shall not be treated as meeting the age and service requirements described in this paragraph until the first date on which, under the plan, any employee with the same age and service would be eligible to commence participation in the plan.”

(i) AMENDMENTS RELATED TO SECTION 1114 OF THE REFORM ACT.—

(1) Paragraph (1) of section 414(q) of the 1986 Code (defining highly compensated employee) is amended by adding at the end thereof the following new flush sentence:

“The Secretary shall adjust the \$75,000 and \$50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).”

(2) Section 414(q)(6) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) RULES TO APPLY TO OTHER PROVISIONS.—

“(i) IN GENERAL.—Except as provided in regulations and in clause (ii), the rules of subparagraph (A) shall be applied in determining the compensation of (or any contributions or benefits on behalf of) any employee for purposes of any section with respect to which a highly compensated employee is defined by reference to this subsection.

“(ii) EXCEPTION FOR DETERMINING INTEGRATION LEVELS.—Clause (i) shall not apply in determining the portion of the compensation of a participant which is under the integration level for purposes of section 401(l).”

(3)(A) Section 414(q)(8) of the 1986 Code (relating to excluded employees) is amended—

(i) by inserting “and” at the end of subparagraph (D), by striking “, and” at the end of subparagraph (E) and inserting in lieu thereof a period, and by striking out subparagraph (F), and

(ii) by striking out “The” in the last sentence thereof and inserting in lieu thereof “Except as provided by the Secretary, the”.

(B) Section 414(q) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(11) SPECIAL RULE FOR NONRESIDENT ALIENS.—For purposes of this subsection and subsection (r), employees who are non-resident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)) shall not be treated as employees.”

(4)(A) Paragraph (8) of section 414(q) of the 1986 Code is amended by inserting “or the number of officers taken into account under paragraph (5)” after “paragraph (4)”.
(B) Section 416(i)(1)(A) of the 1986 Code is amended by adding at the end thereof the following new sentence: “For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(8) shall be excluded.”

(5) Subparagraph (B) of section 408(k)(3) of the 1986 Code amended to read as follows:

- “(B) SPECIAL RULES.—For purposes of subparagraph (A) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).”
- (j) AMENDMENTS RELATED TO SECTION 1115 OF THE REFORM ACT.—
- (1) So much of section 414(s) of the 1986 Code as precedes paragraph (2) is amended to read as follows:

“(s) COMPENSATION.—For purposes of any applicable provision of this subsection—

“(1) IN GENERAL.—Except as provided in this subsection, the term ‘compensation’ has the meaning given such term by section 415(c)(3).”

(2) Section 414(s) of the 1986 Code is amended by striking out paragraph (2), by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and by adding at the end thereof the following new paragraph:

“(4) APPLICABLE PROVISION.—For purposes of this subsection the term ‘applicable provision’ means any provision which specifically refers to this subsection.”

(3)(A) Section 416(i)(1) of the 1986 Code (defining key employee) is amended by adding at the end thereof the following new subparagraph:

“(D) COMPENSATION.—For purposes of this paragraph, the term ‘compensation’ has the meaning given such term by section 414(q)(7).”

26 USC 416 note.

(B) The amendment made by this paragraph shall apply to years beginning after December 31, 1988.

(k) AMENDMENTS RELATED TO SECTION 1116 OF THE REFORM ACT.—

(1)(A) Subparagraph (B) of section 401(k)(2) of the 1986 Code (relating to distributions from a cash or deferred arrangement) is amended—

- (i) by striking out subclauses (II), (III), and (IV) of clause (i) and inserting in lieu thereof:

“(II) an event described in paragraph (10),”, and

- (ii) by redesignating subclauses (V) and (VI) as subclauses (III) and (IV), respectively.

(B) Section 401(k) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(10) DISTRIBUTIONS UPON TERMINATION OF PLAN OR DISPOSITION OF ASSETS OR SUBSIDIARY —

“(A) IN GENERAL.—The following events are described in this paragraph:

“(i) TERMINATION.—The termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

“(ii) DISPOSITION OF ASSETS.—The disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

“(iii) DISPOSITION OF SUBSIDIARY.—The disposition by a corporation of such corporation’s interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.

“(B) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

“(i) IN GENERAL.—An event shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the event.

“(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term ‘lump sum distribution’ has the meaning given such term by section 402(e)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (H) thereof.

“(C) TRANSFEROR CORPORATION MUST MAINTAIN PLAN.—An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.”

(C)(i) Subparagraph (A)(i) of section 401(k)(10) of the 1986 Code (added by subparagraph (B)) shall apply to distributions after October 16, 1987.

26 USC 401 note.

(ii) Subparagraph (B) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after March 31, 1988.

(2) Subparagraph (B) of section 401(k)(2) of the 1986 Code is amended—

(A) by inserting “amounts held by the trust which are attributable to employer contributions made pursuant to the employee’s election” after “under which”,

(B) by striking out “amounts held by the trust which are attributable to employer contributions made pursuant to the employee’s election” in clause (i), and

(C) by striking out “amounts” in clause (ii).

(3)(A) Clause (ii) of section 401(k)(3)(A) of the 1986 Code is amended by inserting “eligible” before “highly compensated employees” each place it appears.

(B) Section 1116(b)(4) of the Reform Act is amended by striking out “any” the first place it appears and inserting in lieu thereof “an”.

26 USC 401.

(4) Subparagraph (C) of section 401(k)(3) of the 1986 Code, as added by section 1116(e) of the Reform Act, is redesignated as subparagraph (D).

(5) Subclause (I) of section 401(k)(3)(D)(ii) of the 1986 Code, as designated by paragraph (4), is amended by striking out “meets” and inserting in lieu thereof “meet”.

(6) Section 401(k)(4)(A) of the 1986 Code is amended by striking out “provided by such employer”.

(7) Section 401(k)(8) of the 1986 Code (relating to arrangement not disqualified if excess contributions distributed) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

“(E) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION.—For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph

26 USC 401 note.

(B), an excess deferral under section 402(g)(2)(A), or excess aggregate contribution under section 401(m)(6)(D).
 (8) Subparagraph (B) of section 1116(f)(2) of the Reform Act amended by adding at the end thereof the following new sentence: "If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, then any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date."

(9) Section 401(k)(4)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"This subparagraph shall not apply to a rural electric cooperative plan."

26 USC 401 note.

(10) Clause (i) of section 1116(f)(2)(B) of the Reform Act amended by striking out "(or political subdivision thereof)" and inserting in lieu thereof "or political subdivision thereof, or agency or instrumentality thereof,".

(1) AMENDMENTS RELATED TO SECTION 1117 OF THE REFORM ACT

(1) Paragraph (1) of section 401(m) of the 1986 Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by striking out "A plan" and inserting in lieu thereof "A defined contribution plan".

(2) Paragraph (3) of section 401(m) of the 1986 Code (relating to requirements) is amended by adding at the end thereof the following new sentence: "If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any year, such contributions shall not be taken into account under this subparagraph (A) for such year."

(3) The last sentence of section 401(m)(2)(B) of the 1986 Code amended by striking out "such contributions" the first place it appears and inserting in lieu thereof "contributions to which this subsection applies".

(4) Section 401(m)(4)(A) of the 1986 Code (defining matching contribution) is amended by striking out "the plan" each place it appears and inserting in lieu thereof "a defined contribution plan".

(5)(A) Section 401(m)(4)(B) of the 1986 Code (defining elective deferral) is amended by striking out "section 402(g)(3)(A)" and inserting in lieu thereof "section 402(g)(3)".

Effective date.

26 USC 401 note.

(B) The amendment made by this paragraph shall take effect as if included in the amendments made by section 1120 of the Reform Act.

(6) Subparagraph (C) of section 401(m)(6) of the 1986 Code amended by striking out "EXCESS" in the subparagraph heading and inserting in lieu thereof "EXCESS AGGREGATE".

(7) Section 401(m)(7)(A) of the 1986 Code (relating to additional tax of section 72(t) not applicable) is amended by striking out "paragraph (8)" and inserting in lieu thereof "paragraph (7)".

(8) Section 4979(a)(1) of the 1986 Code (relating to tax on certain excess contributions) is amended by striking out "a cash or deferred arrangement which is part of".

(9) Section 4979(c) of the 1986 Code (defining excess contributions) is amended—

(A) by striking out "403(b).", and

(B) by striking out "408(k)(8)(B)" and inserting in lieu thereof "408(k)(6)(C)".

(10) Section 4979(d) of the 1986 Code (defining excess aggregate contribution) is amended by adding at the end thereof

...wing new sentence: "For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), such contract shall be treated as a plan described in subsection (e)(1)."

Contracts.

(1) Paragraph (2) of section 4979(f) of the 1986 Code (relating to inclusion in prior year) is amended to read as follows:

(2) YEAR OF INCLUSION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.

"(B) DE MINIMIS DISTRIBUTIONS.—If the total excess contributions and excess aggregate contributions distributed to a recipient under a plan for any plan year are less than \$100, such distributions (and any income allocable thereto) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made."

(2) Subsection (d) of section 1117 of the Reform Act is amended by adding at the end thereof the following new paragraph:

26 USC 401 note.

(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

"(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 shall be treated as made in accordance with the provisions of the plan.

"(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

"(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

"(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan."

AMENDMENTS RELATED TO SECTION 1120 OF THE REFORM ACT.—

(A) Section 403(b)(10) of the 1986 Code (relating to non-discrimination requirements), as added by section 1120(b) of the Reform Act, is redesignated as paragraph (12).

(B) Subparagraph (D) of section 403(b)(1) of the 1986 Code is amended by striking out "paragraph (10)" and inserting in lieu thereof "paragraph (12)".

(C) Clause (i) of section 403(b)(12)(A), as redesignated by paragraph (1), is amended—

(A) by inserting "(17)," after "(5)," and

(B) by inserting ", section 401(m)," after "section 401(a)" the first place it appears.

(D) Section 1120(c) of the Reform Act is amended to read as follows:

26 USC 403 note.

EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1988.

“(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

“(A) January 1, 1991, or

“(B) the later of—

“(i) January 1, 1989, or

“(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).”

SEC. 1011A. AMENDMENTS RELATED TO PARTS III AND IV OF SUBTITLE A OF TITLE XI OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1121 OF THE REFORM ACT.—

(1) Subparagraph (F) of section 402(a)(5) of the 1986 Code (relating to transfer treated as rollover contribution under section 408) is amended by striking out “described in subparagraph (A)” and inserting in lieu thereof “resulting in any portion of a distribution being excluded from gross income under subparagraph (A)”.

(2)(A) Section 408(d)(3)(A) is amended by striking out the last sentence thereof.

26 USC 408 note.

(B) The amendment made by subparagraph (A) shall apply to rollover contributions made in taxable years beginning after December 31, 1986.

26 USC 401 note.

(3) Section 1121(d) of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(5) PLANS MAY INCORPORATE SECTION 401(a)(9) REQUIREMENTS BY REFERENCE.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986.”

(4) Section 1121(d)(3) of the Reform Act is amended by striking out “plan years” and inserting in lieu thereof “years”.

26 USC 402 note.

(5) Section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 shall not apply to distributions after October 22, 1986, and before the 1st taxable year beginning after 1986 which are attributable to benefits which accrued before January 1, 1985.

(b) AMENDMENTS RELATED TO SECTION 1122 OF THE REFORM ACT.—

(1)(A) Section 72(f) of the 1986 Code (relating to special rules for computing employees' contributions) is amended by striking out “for purposes of subsections (d)(1) and (e)(7), the consideration for the contract contributed by the employee,”.

(B) Section 72(n) of the 1986 Code (relating to annuities under retired serviceman's family protection plan or survivor benefit plan) is amended by striking out “Subsections (b) and (d)” and inserting in lieu thereof “Subsection (b)”.

(C) Sections 406(e) and 407(e) of the 1986 Code are each amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2)(A) Section 72 of the 1986 Code (relating to annuities and certain proceeds of endowment and life insurance contracts) is

amended by adding after subsection (c) the following new subsection:

“(d) **TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS AS SEPARATE CONTRACTS.**—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.”

(B) Section 72(e) of the 1986 Code is amended by striking out paragraph (9).

(3) Section 414(k)(2) of the 1986 Code (relating to certain plans treated as defined contribution plans) is amended by inserting “72(d) (relating to treatment of employee contributions as separate contract),” before “411(a)(7)(A)”.

(4)(A) The amendment made by section 1122(e)(1) of the Reform Act is repealed and the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted.

26 USC 402 and
note.

(B) Subclause (I) of section 402(a)(5)(D)(i) of the 1986 Code is amended by inserting “is payable as provided in clause (i), (iii), or (iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and” after “such distribution” the first place it appears.

(C) Section 402(a)(5)(D)(i) of the 1986 Code is amended by adding at the end thereof the following new sentence: “Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II).”

(D) Section 402(a)(5)(D)(iii) is amended by striking out “10-YEAR” in the heading.

(E) Section 402(a)(5)(D)(i)(II) of the 1986 Code (as in effect after the amendment made by subparagraph (A)) shall not apply to distributions after December 31, 1986, and before March 31, 1988.

26 USC 402 note.

(5) Clause (ii) of section 402(a)(6)(H) of the 1986 Code (relating to special rule for frozen deposits) is amended by adding at the end thereof the following new flush sentence:

“A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence.”

(6) Clause (i) of section 402(e)(4)(B) of the 1986 Code is amended by striking out “taxpayer” and inserting in lieu thereof “employee”.

(7) The last sentence of section 402(e)(4)(J) of the 1986 Code (relating to unrealized appreciation on employer securities) is amended to read as follows: “In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a distribution is required to be included, not to have this subparagraph apply with respect to such distribution.”

(8) Section 402 of the 1986 Code (relating to taxability of beneficiary of employees’ trust) is amended as follows:

(A) Subsection (a)(1) is amended by striking out “paragraphs (2) and (4)” and inserting in lieu thereof “paragraph (4)”.

(B) Subsection (a)(4) is amended by striking out “or (2)”.

(C) Subsection (a)(6)(C) is amended by striking out “paragraph (2) of subsection (a), and”.

(D) Subsection (a)(6)(E)(ii) is amended by striking out “paragraph (2) of subsection (a), and” and by striking out the comma after “subsection (e)”.

(E) Subsection (e)(1)(A) is amended by striking out “ordinary income portion of a”.

(F) Subsection (e)(4)(A) is amended—

(i) by striking out “Except for purposes of subsection (a)(2) and section 403(a)(2), a” and inserting in lieu thereof “A”, and

(ii) by striking out “subsection (a)(2) of this section, and subsection (a)(2) of section 403,”.

(G) Subparagraph (L) of subsection (e)(4) is hereby repealed.

(H) Subsection (e)(4)(M) is amended by striking out “, subsection (a)(2) of this section, and section 403(a)(2)”.

(I) Subsection (e)(5) is amended by striking out “and paragraph (2) of subsection (a)”.

(J) Subsection (e)(6)(C) is amended to read as follows:

“(C) SPECIAL LUMP-SUM TREATMENT.—For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution is taxed under this subsection by reason of an election under paragraph (4)(B).”

(9)(A) Section 72(e)(7) of the 1986 Code is hereby repealed.

(B) Section 72(e)(5)(D) is amended by striking out “paragraphs (7) and (8)” and inserting in lieu thereof “paragraph (8)”.

(C) Section 72(e)(8)(A) is amended by striking out “(other than paragraph (7))”.

(D) Section 72(q)(2)(E) of the 1986 Code is amended by striking out “(determined without regard to subsection (e)(7))”.

(10) Section 402(e)(1)(B) of the 1986 Code (relating to amount of tax on lump-sum distributions) is amended by adding at the end thereof the following new flush sentence:

“For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof.”

(11) Section 1122(h) of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(9) SPECIAL RULE FOR STATE PLANS.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

“(A) without regard to the phrase ‘before separation from service’ in paragraph (8)(D), and

“(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date.”

(12) Subparagraph (B) of section 1122(h)(2) of the Reform Act is amended by inserting “, except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986” after “1986”.

(13) Sections 1122 (h)(3)(C) and (h)(4)(C) of the Reform Act are each amended by striking out “with respect to any other lump

sum distribution" and inserting in lieu thereof "for purposes of such Code".

(14) Clause (i) of section 1122(h)(3)(C) of the Reform Act is amended— 26 USC 402 note.

(A) by striking out "individual" and inserting in lieu thereof "employee", and

(B) by inserting "or by an individual, estate, or trust with respect to such an employee" after "1986".

(15) Section 1122(h)(5) of the Reform Act is amended—

(A) by striking out "individual" and inserting in lieu thereof "employee",

(B) by inserting "and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years" after "1986" in the last sentence, and

(C) by adding at the end thereof the following new sentence: "This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph."

(16) Sections 406(c) and 407(c) of the 1986 Code are each amended—

(A) by striking out "subsections (a)(2) and (e) of section 402, and section 403(a)(2)" and inserting in lieu thereof "section 402(e)", and

(B) by striking out "OF CAPITAL GAIN PROVISIONS AND" in the heading thereof.

(c) AMENDMENTS RELATED TO SECTION 1123 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 72(t)(2) of the 1986 Code (relating to subsection not to apply to certain distributions) is amended by striking out "on account of early retirement under the plan" in clause (v).

(2) Subparagraph (C) of section 72(t)(2) of the 1986 Code (relating to certain plans) is amended to read as follows:

"(C) EXCEPTIONS FOR DISTRIBUTIONS FROM EMPLOYEE STOCK OWNERSHIP PLANS.—Any distribution made before January 1, 1990, to an employee from an employee stock ownership plan (as defined in section 4975(e)(7)) or a tax credit employee stock ownership plan (as defined in section 409) if—

"(i) such distribution is attributable to assets which have been invested in employer securities (within the meaning of section 409(l)) at all times during the 5-plan-year period preceding the plan year in which the distribution is made, and

"(ii) at all times during such period the requirements of sections 401(a)(28) and 409 (as in effect at such times) are met with respect to such employer securities."

(3) Subparagraph (A) of section 72(t)(3) of the 1986 Code (relating to certain exceptions not to apply to individual retirement plans) is amended by striking out "and (C)" and inserting in lieu thereof "(C), and (D)".

(4) Subparagraphs (D) and (G) of section 72(q)(2) of the 1986 Code are each amended by striking out the period at the end thereof and inserting in lieu thereof a comma.

(5) Subparagraph (B) of section 72(q)(3) of the 1986 Code (relating to change in substantially equal payments) is amended by striking out "employee" each place it appears and inserting in lieu thereof "taxpayer".

(6) Section 72(q)(2) of the 1986 Code (relating to subsection not to apply to certain dispositions) is amended by inserting after subparagraph (G) the following new subparagraph:

“(H) to which subsection (t) applies (without regard to paragraph (2) thereof),”.

(7) Subparagraph (D) of section 72(q)(2) and clause (iv) of section 72(t)(2)(A) of the 1986 Code are each amended by inserting “designated” before “beneficiary”.

(8) Paragraph (2) of section 72(o) of the 1986 Code (relating to additional tax if amount received before age 59½) is hereby repealed.

(9) Subparagraph (I) of section 402(e)(4) of the 1986 Code is amended by striking out “clause (ii) of”.

(10) Section 26(b)(2) of the 1986 Code is amended—

(A) by striking out “, (o)(2),” in subparagraph (C), and

(B) by striking out “408(f) (relating to additional tax on income from certain retirement accounts)” in subparagraph (D) and inserting in lieu thereof “72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans)”.

26 USC 72 note.

(11) Section 1123(e)(2) of the Reform Act is amended—

(A) by striking out “taxable”, and

(B) by inserting “, but only with respect to distributions from contracts described in section 403(b) of the Internal Revenue Code of 1986 which are attributable to assets other than assets held as of the close of the last year beginning before January 1, 1989” after “1988”.

(12) Section 1123(e) of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(5) **SPECIAL RULE FOR DISTRIBUTIONS UNDER AN ANNUITY CONTRACT.**—The amendments made by paragraphs (1), (2), and (3) of subsection (b) shall not apply to any distribution under an annuity contract if—

“(A) as of March 1, 1986, payments were being made under such contract pursuant to a written election providing a specific schedule for the distribution of the taxpayer’s interest in such contract, and

“(B) such distribution is made pursuant to such written election.”

26 USC 72 note.

(13) Section 72(t) of the 1986 Code shall apply to any distribution without regard to whether such distribution is made without the consent of the participant pursuant to section 411(a)(11) or section 417(e) of the 1986 Code.

(d) **AMENDMENTS RELATED TO SECTION 1124 OF THE REFORM ACT.**—

26 USC 402 note.

(1) Section 1124(a) of the Reform Act is amended to read as follows:

Handicapped persons.

“(a) **IN GENERAL.**—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986.”

(2) Section 1124(b) of the Reform Act is amended—

(A) by striking out “employee” each place it appears and inserting in lieu thereof “individual, estate, or trust”, and

(B) by inserting "with respect to an employee" after "receives".

(3) Section 1124 of the Reform Act is amended by adding at the end thereof the following new subsection:

LUMP SUM DISTRIBUTION.—For purposes of this section, the 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such Code."

AMENDMENTS RELATED TO SECTION 1131 OF THE REFORM ACT.—

(1) Subsection (c) of section 4972 of the 1986 Code (defining nondeductible contributions) is amended to read as follows:

NONDEDUCTIBLE CONTRIBUTIONS.—For purposes of this section—

"(1) **IN GENERAL.**—The term 'nondeductible contributions' means, with respect to any qualified employer plan, the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed for the taxable year by the employer to or under such plan, over

"(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

"(B) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

"(i) the portion of the amount so determined returned to the employer during the taxable year, and

"(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

"(2) **ORDERING RULE FOR SECTION 404.**—For purposes of paragraph (1), the amount allowable as a deduction under section 404 for any taxable year shall be treated as—

"(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

"(B) then from contributions made during such taxable year.

"(3) **CONTRIBUTIONS WHICH MAY BE RETURNED TO EMPLOYER.**—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).

"(4) **PRE-1987 CONTRIBUTIONS.**—The term 'nondeductible contribution' shall not include any contribution made for a taxable year beginning before January 1, 1987."

(2) Paragraph (1) of section 4972(d) of the 1986 Code (defining qualified employer plan) is amended to read as follows:

"(1) **QUALIFIED EMPLOYER PLAN.**—

"(A) **IN GENERAL.**—The term 'qualified employer plan' means—

"(i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a),

"(ii) an annuity plan described in section 403(a), and

“(iii) any simplified employee pension (within the meaning of section 408(k)).

“(B) EXEMPTION FOR GOVERNMENTAL AND TAX EXEMPT PLANS.—The term ‘qualified employer plan’ does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1).”

26 USC 404 note.

(3) Section 1131(d) of the Reform Act is amended to read as follows:

“(d) EFFECTIVE DATES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

“(2) SPECIAL RULES FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to contributions pursuant to any such agreement for taxable years beginning before the earlier of—

“(A) January 1, 1989, or

“(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).”

(4)(A) Subparagraph (A) of section 404(a)(7) of the 1986 Code is amended—

(i) by striking out “provisions” and inserting in lieu thereof “paragraphs”, and

(ii) by inserting “or in connection with trusts or plans described in 2 or more of such paragraphs” after “1 or more defined benefit plans”.

(B) Paragraph (3) of section 404(h) of the 1986 Code is amended to read as follows:

“(3) COORDINATION WITH SUBSECTION (a) (7).—For purposes of subsection (a)(7), a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust.”

26 USC 4972
note.

(5) In the case of any taxable year beginning in 1987, the amount under section 4972(c)(1)(A)(ii) of the 1986 Code for a plan to which title IV of the Employee Retirement Income Security Act of 1974 applies shall be increased by the amount (if any) by which, as of the close of the plan year with or within which such taxable year begins—

(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed

(B) the assets of such plan.

Securities.

(f) AMENDMENTS RELATED TO SECTION 1132 OF THE REFORM ACT.—

(1) Section 4980(c)(1)(A) of the 1986 Code (defining qualified plan) is amended by striking out “this subtitle” and inserting in lieu thereof “subtitle A”.

(2) Section 4980(c)(3)(A) of the 1986 Code (relating to exception for employee stock ownership plans) is amended—

(A) by inserting “or a tax credit employee stock ownership plan (as described in section 409)” after “section 4975(e)(7)”, and

(B) by inserting “, except to the extent necessary to meet the requirements of section 401(a)(28),” after “must”.

(3) Subparagraph (C) of section 4980(c)(3) of the 1986 Code is amended—

(A) by striking out “(by reason of the limitations of section 415)”, and

(B) by adding at the end thereof the following new sentence:

“The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or $\frac{1}{2}$ of the amount attributable to the securities acquired.”

(4) Subparagraph (B) of section 1132(c)(2) of the Reform Act is amended by striking out “November 19, 1978” and inserting in lieu thereof “September 19, 1978”.

26 USC 4980
note.

(5) Section 1132(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(5) SPECIAL RULE FOR EMPLOYEE STOCK OWNERSHIP PLANS.—Section 4980(c)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to reversions occurring after March 31, 1985.”

(6) Section 4980(c)(3) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

“(F) NO CREDIT OR DEDUCTION ALLOWED.—No credit or deduction shall be allowed under chapter 1 for any amount transferred to an employee stock ownership plan in a transfer to which this paragraph applies.

“(G) AMOUNT TRANSFERRED TO INCLUDE INCOME THEREON, ETC.—The amount transferred shall not be treated as meeting the requirements of subparagraphs (B) and (C) unless amounts attributable to such amount also meet such requirements.”

(7) Section 4980(c)(3)(C) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“In the case of dividends on securities held in the suspense account, the requirements of this subparagraph are met only if the dividends are allocated to accounts of participants or paid to participants in proportion to their accounts, or used to repay loans used to purchase employer securities.”

(g) AMENDMENTS RELATED TO SECTION 1133 OF THE REFORM ACT.—

Retirement.

(1)(A) Section 4981A of the 1986 Code (as added by section 1133 of the Reform Act) is redesignated as section 4980A.

(B) The table of sections for chapter 43 of the 1986 Code is amended by redesignating section 4981A as section 4980A.

(2) Paragraph (1) of section 4980A(c) of the 1986 Code (as redesignated by paragraph (1)) is amended by striking out “\$112,500 (adjusted at the same time and in the same manner as under section 415(d))” and inserting in lieu thereof “the greater of—

“(A) \$150,000, or

“(B) \$112,500 (adjusted at the same time and in the same manner as under section 415(d)).”

(3) Section 4980A(c)(2) of the 1986 Code (relating to exclusion of certain distributions), as redesignated by paragraph (1), is amended—

(A) by striking out “employee’s” in subparagraph (C) and inserting in lieu thereof “individual’s”, and

(B) by adding after subparagraph (D) the following new subparagraphs:

“(E) Any retirement distribution with respect to an individual of an annuity contract the value of which is not includible in gross income at the time of the distribution (other than distributions under, or proceeds from the sale or exchange of, such contract).

“(F) Any retirement distribution with respect to an individual of—

“(i) excess deferrals (and income allocable thereto) under section 402(g)(2)(A)(ii), or

“(ii) excess contributions (and income allocable thereto) under section 401(k)(8) or 408(d)(4) or excess aggregate contributions (and income allocable thereto) under section 401(m)(6).”

(4)(A) Section 4980A of the 1986 Code, as redesignated by paragraph (1), is amended by adding at the end thereof the following new subsection:

“(f) EXEMPTION OF ACCRUED BENEFITS IN EXCESS OF \$562,500 ON AUGUST 1, 1986.—For purposes of this section—

“(1) IN GENERAL.—If an election is made with respect to an eligible individual to have this subsection apply, the individual's excess distributions and excess retirement accumulation shall be computed without regard to any distributions or interests attributable to the accrued benefit of the individual as of August 1, 1986.

“(2) REDUCTION IN AMOUNTS WHICH MAY BE RECEIVED WITHOUT TAX.—If this subsection applies to any individual—

“(A) EXCESS DISTRIBUTIONS.—Subsection (c)(1) shall be applied—

“(i) without regard to subparagraph (A), and

“(ii) by reducing (but not below zero) the amount determined under subparagraph (B) thereof by retirement distributions attributable (as determined under rules prescribed by the Secretary) to the individual's accrued benefit as of August 1, 1986.

“(B) EXCESS RETIREMENT ACCUMULATION.—The amount determined under subsection (d)(3)(B) (without regard to subsection (c)(1)(A)) with respect to such individual shall be reduced (but not below zero) by the present value of the individual's accrued benefit as of August 1, 1986, which has not been distributed as of the date of death.

“(3) ELIGIBLE INDIVIDUAL.—For purposes of this subsection, the term ‘eligible individual’ means any individual if, on August 1, 1986, the present value of such individual's interests in qualified employer plans and individual retirement plans exceeded \$562,500.

“(4) CERTAIN AMOUNTS EXCLUDED.—In determining an individual's accrued benefit for purposes of this subsection, there shall not be taken into account any portion of the accrued benefit—

“(A) payable to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)) if includible in income of the alternate payee, or

“(B) attributable to the individual's investment in the contract (as defined in section 72(f)).

“(5) ELECTION.—An election under paragraph (1) shall be made on an individual's return of tax imposed by chapter 1 or 11 for a taxable year beginning before January 1, 1989.”

B) Section 4980A(c) of the 1986 Code, as redesignated by paragraph (1), is amended by striking out paragraph (5).

5) Section 4980A(d) of the 1986 Code (relating to increase in estate tax if individual dies with excess accumulation), as redesignated by paragraph (1), is amended—

(A) by striking out “section 2010” in paragraph (2) and inserting in lieu thereof “chapter 11”, and

(B) by adding at the end thereof the following new paragraphs:

(4) RULES FOR COMPUTING EXCESS RETIREMENT ACCUMULATION.—The excess retirement accumulation of an individual will be computed without regard to—

“(A) any community property law,

“(B) the value of—

“(i) amounts payable to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)) if includible in income of the alternate payee, and

“(ii) the individual’s investment in the contract (as defined in section 72(f)), and

“(C) the excess (if any) of—

“(i) any interests which are payable immediately after death, over

“(ii) the value of such interests immediately before death.

(5) ELECTION BY SPOUSE TO HAVE EXCESS DISTRIBUTION RULE APPLY.—

“(A) IN GENERAL.—If the spouse of an individual is the beneficiary of all of the interests described in paragraph (3)(A), the spouse may elect—

“(i) not to have this subsection apply, and

“(ii) to have this section apply to such interests and any retirement distribution attributable to such interests as if such interests were the spouse’s.

“(B) DE MINIMIS EXCEPTION.—If 1 or more persons other than the spouse are beneficiaries of a de minimis portion of the interests described in paragraph (3)(A)—

“(i) the spouse shall not be treated as failing to meet the requirements of subparagraph (A), and

“(ii) if the spouse makes the election under subparagraph (A), this section shall not apply to such portion or any retirement distribution attributable to such portion.”

6) Subparagraph (B) of section 4980A(d)(3) of the 1986 Code, redesignated by paragraph (1), is amended to read as follows:

“(B) the present value (as determined under rules prescribed by the Secretary as of the valuation date prescribed in subparagraph (A)) of a single life annuity with annual payments equal to the limitation of subsection (c) (as in effect for the year in which death occurs and as if the individual had not died).”

7) Section 2013 of the 1986 Code (relating to credit for tax on prior transfer) is amended by adding at the end thereof the following new subsection:

TREATMENT OF ADDITIONAL TAX UNDER SECTION 4980A.—For purposes of this section, the estate tax paid shall not include any of such tax attributable to section 4980A(d).”

26 USC 4980A
note.

(8) Paragraph (1) of section 1133(c) of the Reform Act is amended by inserting “, other than a distribution with respect to a decedent dying before January 1, 1987” after “1986”.

(9) Section 4980A(d)(3)(A) of the 1986 Code is amended by inserting “(other than as a beneficiary, determined after application of paragraph (5))” after “the individual’s interests”.

(10) Section 691(c)(1) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) **EXCESS RETIREMENT ACCUMULATION TAX.**—For purposes of this subsection, no deduction shall be allowed for the portion of the estate tax attributable to the increase in such tax under section 4980A(d).”

(11) Section 2053(c)(1)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: “This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d).”

(12) Section 6018(a) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) **RETURN REQUIRED IF EXCESS RETIREMENT ACCUMULATION TAX.**—The executor shall make a return with respect to the estate tax imposed by subtitle B in any case where such tax is increased by reason of section 4980A(d).”

(b) **AMENDMENTS RELATED TO SECTION 1134 OF THE REFORM ACT.**—

(1) Section 72(p)(3)(A) of the 1986 Code (relating to denial of interest deductions in certain cases) is amended by inserting “to which paragraph (1) does not apply by reason of paragraph (2) during the period” after “loan”.

(2) Subparagraph (B) of section 72(p)(3) of the 1986 Code is amended to read as follows:

“(B) **PERIOD TO WHICH SUBPARAGRAPH (A) APPLIES.**—For purposes of subparagraph (A), the period described in this subparagraph is the period—

“(i) on or after the 1st day on which the individual to whom the loan is made is a key employee (as defined in section 416(i)), or

“(ii) such loan is secured by amounts attributable to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3).”

(i) **AMENDMENTS RELATED TO SECTION 1135 OF THE REFORM ACT.**—

(1) Subparagraph (A) of section 72(u)(1) of the 1986 Code (relating to annuity contracts not held by natural persons) is amended by inserting “(other than subchapter L)” after “subtitle”.

(2) Subparagraph (D) of section 72(u)(3) of the 1986 Code (relating to exceptions) is amended by striking out “until such time as the employee separates from service” and inserting in lieu thereof “until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee’s beneficiary”.

(3) Subparagraphs (D) and (E) of section 72(u)(3) of the 1986 Code (relating to exceptions) are each amended by striking out “which”.

(4) Paragraph (4) of section 72(u) of the 1986 Code is amended by striking out “and” at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new subparagraph:

“(C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period.”

AMENDMENTS RELATED TO SECTION 1136 OF THE REFORM ACT.—

(1) Section 401(a)(27) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(B) **PLAN MUST DESIGNATE TYPE.**—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.”

(2) Section 401(a)(27) of the 1986 Code is amended by striking out “(27)” and inserting in lieu thereof:

“(27) **DETERMINATIONS AS TO PROFIT-SHARING PLANS.**—

“(A) **CONTRIBUTIONS NEED NOT BE BASED ON PROFITS.**—”.

AMENDMENT RELATED TO SECTION 1139 OF THE REFORM ACT.—

Use (i) of section 1139(d)(2)(A) of the Reform Act is amended by striking out “before January” and inserting in lieu thereof “after January”.

26 USC 411 note.

AMENDMENT RELATED TO SECTION 1145 OF THE REFORM ACT.—Paragraph (E) of section 401(a)(11) of the 1986 Code (relating to cross reference) is redesignated as subparagraph (F).

AMENDMENTS RELATED TO SECTION 1147 OF THE REFORM ACT.—

(1) Subparagraph (C) of section 7701(j)(1) of the 1986 Code (relating to tax treatment of Federal Thrift Savings Fund) is amended by inserting “, section 401(k)(4)(B),” after “paragraph (2)”.

(2) Section 8440(a)(3) of title 5, United States Code, is amended by inserting “, 401(k)(4)(B) of such Code,” after “subsection (b)”.

1011B. AMENDMENTS RELATED TO SUBTITLES B AND C OF TITLE XI OF THE REFORM ACT.

AMENDMENTS RELATED TO SECTION 1151 OF THE REFORM ACT.—

(1) Paragraph (2) of section 89(a) of the 1986 Code (relating to year of inclusion) is amended to read as follows:

“(2) **YEAR OF INCLUSION.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B)—

“(i) any amount included in gross income under paragraph (1) shall be taken into account for the taxable year of the employee with or within which the plan year ends, and

“(ii) any deduction of the employer attributable to such amount shall be allowable for the taxable year of the employer with or within which the plan year ends.

“(B) **ELECTION TO DELAY INCLUSION FOR 1 YEAR.**—If an employer maintaining a plan with a plan year ending after September 30 and on or before December 31 of a calendar year elects the application of this subparagraph—

“(i) amounts included in gross income under paragraph (1) with respect to employees of such employer shall be taken into account for the taxable year of the employee following the taxable year determined under subparagraph (A), but

“(ii) any deduction of the employer which is attributable to such amounts shall be allowable for the tax-

able year with or within which the plan year following the plan year in which the excess benefits occurred ends."

(2) Paragraph (4) of section 89(b) of the 1986 Code (defining nontaxable benefits) is amended by adding at the end thereof the following new sentence: "Such term includes any group-term life insurance the cost of which is includible in gross income under section 79."

(3) Paragraph (1) of section 89(g) of the 1986 Code (relating to the aggregation of comparable health plans) is amended by adding at the end thereof the following new subparagraph:

"(C) **EMPLOYEES COVERED BY MORE THAN 1 PLAN.**—The Secretary may provide that 2 or more plans providing benefits to the same participant shall be treated as 1 plan for purposes of applying subsections (d)(1)(B), (d)(2), and (f)."

(4) Subparagraph (B) of section 89(g)(2) of the 1986 Code (relating to sworn statements) is amended by adding at the end thereof the following new sentence: "No statement shall be required under clause (ii) with respect to any individual eligible for coverage at no cost under a health plan which provides core health benefits and with respect to whom the employee does not elect any core health coverage from the employer."

(5) Subparagraph (D) of section 89(g)(2) of the 1986 Code is amended by striking out "under such plan" and inserting in lieu thereof "under such plans".

(6) Section 89(g) of the 1986 Code is amended by striking out paragraph (6).

(7) Subparagraph (A) of section 89(h)(1) of the 1986 Code (relating to excluded employees) is amended by inserting "(or 1st day of a period of less than 31 days specified by the plan)" after "month".

(8) Section 89(j) of the 1986 Code (relating to other definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(12) **EMPLOYERS WITH ONLY HIGHLY COMPENSATED EMPLOYEES.**—The requirements of subsections (d) and (e) shall not apply to any statutory employee benefit plan for any year for which the only employees of the employer maintaining the plan are highly compensated employees."

(9) Section 89(k) of the 1986 Code (relating to requirement that plan be in writing) is amended by adding at the end thereof the following new paragraph:

"(5) **LOSS OF EXEMPTION FOR CERTAIN PLANS.**—If a plan described in paragraph (2)(E) fails to meet the requirements of paragraph (1), the organization which is part of such plan shall not be exempt from tax under section 501(a)."

(10) Section 6652(k)(2)(B) of the 1986 Code (relating to amount of additional tax) is amended by striking out "subsection (g)(3)" and inserting in lieu thereof "subsection (g)(3)(C)(i)".

(11)(A) Subsection (a) of section 125 of the 1986 Code is amended to read as follows:

"(a) **GENERAL RULE.**—Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan."

(B) Paragraph (1) of section 125(b) of the 1986 Code is amended by striking out "A plan shall be treated as failing to meet the

requirements of this subsection” and inserting in lieu thereof “In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year”.

(C) Paragraph (2) of section 125(b) of the 1986 Code is amended by striking out “a plan shall be treated as failing to meet the requirements of this subsection” and inserting in lieu thereof “subsection (a) shall not apply to any plan year”.

(12) Subparagraph (B) of section 125(c)(1) of the 1986 Code (defining cafeteria plans) is amended to read as follows:

“(B) the participant may choose among 2 or more benefits consisting of cash and qualified benefits.”

(13)(A) Paragraph (1) of section 125(e) of the 1986 Code (defining qualified benefits) is amended by inserting “and without regard to section 89(a)” after “subsection (a)”.

(B) The last sentence of section 125(b)(2) of the 1986 Code is amended to read as follows: “For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.”

(14) Subsection (d) of section 129 of the 1986 Code is amended by redesignating paragraph (8) as paragraph (7).

(15) Paragraph (7) of section 129(d) of the 1986 Code (as so redesignated) is amended—

(A) by inserting “under all plans of the employer” after “employees” the 2nd and 3rd time it appears in subparagraph (A),

(B) by striking out “there shall be disregarded” in subparagraph (B) and inserting in lieu thereof “a plan may disregard”, and

(C) by striking out “415(q)(7)” in subparagraph (B) and inserting in lieu thereof “414(q)(7)”.

(16) Section 414(m)(4) of the 1986 Code is amended by inserting “and” at the end of subparagraph (A), by striking out the comma at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraphs (C) and (D).

(17) Paragraph (2) of section 414(t) of the 1986 Code is amended by striking out “132,” and inserting in lieu thereof “132, 162(i)(2), 162(k),”.

(18) Paragraph (6) of section 129(e) of the 1986 Code is amended by striking out “of subsection (d)” and inserting in lieu thereof “of subsection (d) (other than paragraphs (4) and (7) thereof)”.

(19) Subparagraph (C) of section 414(n)(3) of the 1986 Code is amended by striking out “132,” and inserting in lieu thereof “132, 162(i)(2), 162(k),”.

(20) Section 414(t)(1) of the 1986 Code (relating to application of controlled group rules to certain employees) is amended by striking out “of section 414” each place it appears.

(21) Section 89(j)(6) of the 1986 Code is amended by striking out “described in subparagraph (A), (B), or (C) of subsection (i)(2)”.

(22)(A) Section 3121 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

“(x) **BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.**—Notwithstanding any paragraph of subsection (a) (other

than paragraph (1)), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(B) Section 3231(e) of the 1986 Code (defining compensation) is amended by adding at the end thereof the following new paragraph:

"(8) BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.—Notwithstanding any other paragraph of this subsection (other than paragraph (2)), the term 'compensation' shall include any amount which is includible in gross income by reason of section 89."

(C) Section 3306 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(t) BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.—Notwithstanding any paragraph of subsection (b) (other than paragraph (1)), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(D) Section 3401 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(g) BENEFITS PROVIDED UNDER CERTAIN EMPLOYEE BENEFIT PLANS.—Notwithstanding any paragraph of subsection (a), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(E) The third to last sentence of section 209 of the Social Security Act is amended—

(i) by striking out the period at the end of clause (2) and inserting in lieu thereof "or", and

(ii) by inserting after clause (2) the following new clause:

"(3) Any amount required to be included in gross income under section 89 of the Internal Revenue Code of 1986."

(F) The amendments made by this paragraph shall not apply to any individual who separated from service with the employer before January 1, 1989.

(23)(A) Sections 3121(a)(5)(G) and 3306(b)(5)(G) of the 1986 Code are each amended by inserting "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "section 125)".

(B) Section 209(e)(9) of the Social Security Act is amended by inserting "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "1986)".

(24) Section 1151(h)(3) of the Reform Act is amended by striking out "Section 6039B(c)" and inserting in lieu thereof "Section 6039D(c)".

(25) Paragraph (1) of section 1151(k) of the Reform Act is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) shall, to the extent they relate to sections 106, 162(i)(2), and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986."

(26) Section 1151(k) of the Reform Act is amended by adding at the end thereof the following new paragraph:

42 USC 409.

26 USC 3121
note.

Wages.

26 USC 6039B,
6039D.

26 USC 89 note.

"(6) CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—If an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 makes an election under this paragraph with respect to a plan described in section 125(c)(2)(C) of such Code, the amendments made by this section shall apply with respect to such plan for plan years beginning after the date of the enactment of this Act."

(27)(A) Section 4976 of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) TAX ON FUNDED WELFARE BENEFIT FUNDS WHICH INCLUDE DISCRIMINATORY EMPLOYEE BENEFIT PLAN.—

"(1) IN GENERAL.—If—

"(A) an employer maintains a welfare benefit fund, and

"(B) a discriminatory employee benefit plan (within the meaning of section 89) is part of such fund for any plan year,

there is hereby imposed on such employer for the taxable year with or within which the plan year ends a tax in the amount determined under paragraph (2).

"(2) AMOUNT OF TAX.—The amount of the tax under paragraph (1) shall be equal to the excess (if any) of—

"(A) the product of the highest rate of tax imposed by section 11, multiplied by the lesser of—

"(i) the aggregate excess benefits (as defined in section 89) for such plan year, or

"(ii) the taxable income of the fund for such plan year, over

"(B) the amount of tax imposed by chapter 1 on such fund for such plan year."

(B) Section 4976(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) LIMITATION IN CASE OF BENEFITS TO WHICH SECTION 89 APPLIES.—If section 89 applies to any post-retirement medical benefit or life insurance benefit provided by a fund, the amount of the disqualified benefit under paragraph (1)(B) with respect to such benefit shall not exceed the aggregate excess benefits provided by the plan (as determined under section 89)."

(C) Section 505(a)(1) of the 1986 Code is amended by adding at the end thereof the following new subsection: "This paragraph shall not apply to any organization by reason of a failure to meet the requirements of subsection (b) with respect to a benefit to which section 89 applies."

(28) Section 89(h)(4) of the 1986 Code is amended by striking out "subsection (h)(5)" and inserting in lieu thereof "subsection (g)(5)".

(29) Section 89(k)(1) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentences:

"Such inclusion shall be coordinated (under regulations prescribed by the Secretary) with any inclusion under subsection (a) with respect to such plan. In the case of a statutory employee benefit plan described in subsection (i)(1)(B), any amount required to be included in gross income under this subsection shall be included in the gross income of the beneficiary."

(30) Section 129(d)(1)(B) of the 1986 Code is amended by striking out "(6)" and inserting in lieu thereof "(7)".

(31)(A) Section 129(d) of the 1986 Code is amended—

- (i) by striking out the last sentence of paragraph (3), and
- (ii) by inserting at the end thereof the following new paragraph:

“(8) EXCLUDED EMPLOYEES.—For purposes of paragraphs (2), (3), and (7), there shall be excluded from consideration employees who are excluded from consideration under section 89(h).”

(B) Sections 117(d)(4), 120(c)(2), 127(b)(2), 132(h)(1), and 505(b)(2) of the 1986 Code are each amended—

(i) by striking out “may” the first place it appears and inserting in lieu thereof “shall”, and

(ii) by striking out “may be” the second place it appears and inserting in lieu thereof “are”.

(32) Section 505(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(7) \$200,000 COMPENSATION LIMIT.—A plan shall not be treated as meeting the requirements of this subsection unless under the plan the annual compensation of each employee taken into account for any year does not exceed \$200,000. The Secretary shall adjust the \$200,000 amount at the same time and in the same manner as under section 415(d).”

(33) Section 3401(a) of the 1986 Code is amended by inserting “or” at the end of paragraph (18), by striking out paragraph (19), and by redesignating paragraph (20) as paragraph (19).

(34) Section 89(l)(2) of the 1986 Code is amended by striking out “6652(l)” and inserting in lieu thereof “6652(k)”.

(b) AMENDMENTS RELATED TO SECTION 1161 OF THE REFORM ACT.—

(1) Section 162(m) of the 1986 Code (relating to special rules for health insurance costs of self-employed individuals) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX PURPOSES.—The deduction allowable by reason of this subsection shall not be taken into account in determining an individual’s net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.”

(2) Section 162(m) of the 1986 Code (relating to cross reference) as redesignated by section 1161(a) of the Reform Act, is redesignated as subsection (n).

(3) Section 162(m)(2)(A) of the 1986 Code is amended by inserting: “derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established” after “401(c)”.

(4) Section 211(a) of the Social Security Act is amended by inserting after paragraph (13) the following new paragraph:

“(14) The deduction under section 162(m) (relating to health insurance costs of self-employed individuals) shall not be allowed.”

(c) AMENDMENTS RELATED TO SECTION 1163 OF THE REFORM ACT.—
(1) Paragraph (8) of section 129(e) of the 1986 Code (relating to treatment of onsite facilities) is amended—

(A) by inserting “maintained by an employer” after “onsite facility”,

(B) by inserting “of dependent care assistance provided to an employee” after “the amount”,

(C) by inserting “of the facility by a dependent of the employee” after “utilization” in subparagraph (A), and

(D) by inserting "with respect to such dependent" after "provided" in subparagraph (B).

(2)(A) Paragraph (2) of section 129(a) of the 1986 Code is amended to read as follows:

"(2) LIMITATION OF EXCLUSION.—

"(A) IN GENERAL.—The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed \$5,000 (\$2,500 in the case of a separate return by a married individual).

"(B) YEAR OF INCLUSION.—The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

"(C) MARITAL STATUS.—For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e)."

(B) Section 6051(a) of the 1986 Code is amended by striking out the period at the end of paragraph (8) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(9) the total amount incurred for dependent care assistance with respect to such employee under a dependent care assistance program described in section 129(d)."

(C)(i) Except as provided in this subparagraph, the amendments made by this paragraph shall apply to taxable years beginning after December 31, 1987.

26 USC 129 note.

(ii) A taxpayer may elect to have the amendment made by subparagraph (A) apply to taxable years beginning in 1987.

(iii) In the case of a taxpayer not making an election under clause (ii), any dependent care assistance provided in a taxable year beginning in 1987 with respect to which reimbursement was not received in such taxable year shall be treated as provided in the taxpayer's first taxable year beginning after December 31, 1987.

(D) AMENDMENT RELATED TO SECTION 1164 OF THE REFORM ACT.—Section 119(d)(2) of the 1986 Code is amended—

(1) by striking out "(as of the close of the calendar year in which the taxable year begins)" in subparagraph (A)(i), and

(2) by adding at the end thereof the following:

"The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins."

(E) AMENDMENTS RELATED TO SECTION 1166 OF THE REFORM ACT.—Section 7701(a)(20) of the 1986 Code (defining employee) is amended—

(1) by striking out "106, and 125" and inserting in lieu thereof "and 106", and

(2) by inserting "and for purposes of applying section 125 with respect to cafeteria plans," before "the term".

(F) AMENDMENTS RELATED TO SECTION 1168 OF THE REFORM ACT.—

(1) Paragraph (1) of section 134(b) of the 1986 Code is amended by striking out "or regulation thereunder" and inserting in lieu thereof ", regulation, or administrative practice".

(2)(A) Section 134(b)(1) of the 1986 Code is amended by inserting “(other than personal use of a vehicle)” after “in-kind benefit”.

26 USC 134 note.

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1986.

(3) Section 134(b)(3)(A) of the 1986 Code is amended by striking out “under any provision of law or regulation described in paragraph (1)”.

26 USC 134 note.

(4) Section 1168(c) of the Reform Act is amended by striking out “1986” and inserting in lieu thereof “1984”.

(g) AMENDMENTS RELATED TO SECTION 1172 OF THE REFORM ACT.—

26 USC 409.

(1) Section 1172(b)(1)(A) of the Reform Act is amended by inserting “each place it appears” before the comma.

(2) Paragraphs (2) and (3) of section 409(n) of the 1986 Code (relating to securities received in certain transactions) is amended by inserting “or section 2057” after “section 1042” each place it appears.

(3) Paragraph (1) of section 2057(b) of the 1986 Code (relating to qualified sale) is amended by striking out “is”.

Loans.

(h) AMENDMENTS RELATED TO SECTION 1173 OF THE REFORM ACT.—

(1) Section 133 of the 1986 Code (relating to exclusion of interest on securities acquisition loans) is amended by adding at the end thereof the following new subsection:

“(e) PERIOD TO WHICH INTEREST EXCLUSION APPLIES.—

“(1) IN GENERAL.—In the case of—

“(A) an original securities acquisition loan, and

“(B) any securities acquisition loan (or series of such loans) used to refinance the original securities acquisition loan,

subsection (a) shall apply only to interest accruing during the excludable period with respect to the original securities acquisition loan.

“(2) EXCLUDABLE PERIOD.—For purposes of this subsection, the term ‘excludable period’ means, with respect to any original securities acquisition loan—

“(A) IN GENERAL.—The 7-year period beginning on the date of such loan.

“(B) LOANS DESCRIBED IN SUBSECTION (b)(1)(A).—If the term of an original securities acquisition loan described in subsection (b)(1)(A) is greater than 7 years, the term of such loan. This subparagraph shall not apply to a loan described in subsection (b)(3)(B).

“(3) ORIGINAL SECURITIES ACQUISITION LOAN.—For the purposes of this subsection, the term ‘original securities acquisition loan’ means a securities acquisition loan described in subparagraph (A) or (B) of subsection (b)(1).”

(2)(A) Section 133(b) of the 1986 Code (defining securities acquisition loan) is amended—

(i) by striking out “or are used to refinance such a loan,” in paragraph (1)(A),

(ii) by striking out “, except that this subparagraph shall not apply to any loan the commitment period of which exceeds 7 years” in paragraph (1)(B), and

(iii) by adding at the end thereof the following new paragraph:

“(5) TREATMENT OF REFINANCINGS.—The term ‘securities acquisition loan’ shall include any loan which—

“(A) is (or is part of a series of loans) used to refinance a loan described in subparagraph (A) or (B) of paragraph (1), and

“(B) meets the requirements of paragraphs (2) and (3).”

(B) Subparagraph (B) of section 133(b)(3) of the 1986 Code is amended to read as follows:

“(B) repayment terms providing for more rapid repayment of principal or interest on such loan, but only if allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)).”

(3) Section 404(k) of the 1986 Code is amended—

(A) by inserting “(whether or not allocated to participants)” after “employer securities” in paragraph (2)(C), and

(B) by adding at the end thereof the following new sentence: “Paragraph (2)(C) shall not apply to dividends from employer securities which are allocated to any participant unless the plan provides that employer securities with a fair market value not less than the amount of such dividends are allocated to such participant for the year which (but for paragraph (2)(C)) such dividends would have been allocated to such participant.”

(4) Subparagraph (C) of section 852(b)(5) of the 1986 Code (relating to interest on certain loans used to acquire employer securities) is amended by striking out “paragraph” and inserting in lieu thereof “section”.

(5)(A) The amendments made by paragraphs (1) and (2) shall apply to— 26 USC 133 note.

(i) any loan used to acquire employer securities after July 18, 1984, and

(ii) loans made after July 18, 1984, which were used (or were part of a series of loans used) to refinance any loan which—

(I) was used to acquire employer securities after May 23, 1984 (July 18, 1984, in the case of a loan described in section 133(b)(3)(B) of the Internal Revenue Code of 1986), and

(II) met the requirements of section 133 (other than subsection (b)(2) thereof) of such Code as in effect as of the later of the date on which the loan was made, or July 19, 1984.

In no event shall such amendments apply to any loan described in section 133(b)(1)(B) of such Code which is made before October 22, 1986 (or loan used, or part of a series of loans used, to refinance such a loan).

(B) Subparagraph (B) of section 1173(c)(2) of the Reform Act is amended to read as follows: 26 USC 133 note.

“(B) Section 133(b)(1)(A) of the Internal Revenue Code of 1986, as amended by subsection (b)(2), shall apply to any loan used (or part of a series of loans used) to refinance a loan which—

“(i) was used to acquire employer securities after May 23, 1984, and

“(ii) met the requirements of section 133 of the Internal Revenue Code of 1986 as in effect as of the later of—

“(I) the date on which the loan was made, or

(6) Section 404(k) of the 1986 Code is amended by striking out “merely by reason of any distribution” in the third sentence and inserting in lieu thereof “or as engaging in a prohibited transaction for purposes of section 4975(d)(3) merely by reason of any distribution or payment”.

(i) AMENDMENTS RELATED TO SECTION 1174 OF THE REFORM ACT.—

(1) Clause (ii) of section 409(o)(1)(A) of the 1986 Code (relating to distribution requirement) is amended by striking out “such year” and inserting in lieu thereof “distribution is required to begin under this clause”.

26 USC 409 note.

(2) Section 1174(a)(2) of the Reform Act is amended by striking out “plan terminations” and inserting in lieu thereof “distributions”.

(3) Section 409(o)(1)(A) of the 1986 Code is amended by striking out “unless the participant otherwise elects” and inserting in lieu thereof “if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant’s spouse elects”.

(j) AMENDMENTS RELATED TO SECTION 1175 OF THE REFORM ACT.—

(1) Subclause (II) of section 401(a)(28)(B) of the 1986 Code (relating to method of meeting requirements) is amended by inserting “and within 90 days after the period during which the election may be made, the plan invests the portion of the participant’s account covered by the election in accordance with such election” after “clause (i)”.

(2) Clause (iv) of section 401(a)(28)(B) of the 1986 Code is amended to read as follows:

“(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term ‘qualified election period’ means the 6-plan-year period beginning with the later of—

“(I) the 1st plan year in which the individual first became a qualified participant, or

“(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.”

(3) The last sentence of section 409(d) of the 1986 Code (relating to employer securities must stay in the plan) is amended by inserting “or to any distribution or reinvestment required under section 401(a)(28)” after “section 401(a)(9)”.

(4) Section 4978(d) of the 1986 Code (relating to section not to apply to certain dispositions) is amended by adding at the end thereof the following new paragraph:

“(4) DISPOSITIONS TO MEET DIVERSIFICATION REQUIREMENTS.—This section shall not apply to any disposition of qualified securities which is required under section 401(a)(28).”

(5) Section 409(h) of the 1986 Code (relating to right to demand employer securities; put option) is amended by adding at the end thereof the following new paragraph:

“(7) EXCEPTION WHERE EMPLOYEE ELECTED DIVERSIFICATION.—Paragraph (1)(A) shall not apply with respect to the portion of

the participant's account which the employee elected to have reinvested under section 401(a)(28)(B)."

(6) Section 401(a)(28)(B) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(v) COORDINATION WITH DISTRIBUTION RULES.—Any distribution required by this subparagraph shall not be taken into account in determining whether—

"(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

"(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution."

(k) AMENDMENTS RELATED TO SECTION 1176 OF THE REFORM ACT.—

(1) Section 401(a)(22) of the 1986 Code is amended by striking out "is not publicly traded" each place it appears and inserting in lieu thereof "is not readily tradable on an established market".

(2) Section 401(a)(22) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market."

(3) Section 409(l)(4) of the 1986 Code (relating to nonvoting common stock may be acquired in certain cases), as added by section 1176(b) of the Reform Act, is redesignated as paragraph (5).

(l) AMENDMENTS RELATED TO SECTION 1177 OF THE REFORM ACT.—

(1) Paragraph (2) of section 1177(b) of the Reform Act is amended by striking out "section 143(d)(3)(C)" and inserting in lieu thereof "section 146(d)(3)(C)".

26 USC 38 note.

(2) Subsection (b) of section 1177 of the Reform Act is amended by striking out "made by this subtitle" and inserting in lieu thereof "made by section 1175".

(3) If any newspaper corporation described in section 1177(b) of the Reform Act, as amended by this subsection, pays in cash a dividend within 60 days after the date of the enactment of this Act to the corporation's employee stock ownership plans and if a corporate resolution declaring such dividend was adopted before November 30, 1987, and such resolution specifies that such dividend shall be contingent upon passage by the Congress of technical corrections, then such dividend (to the extent the aggregate amount so paid does not exceed \$3,500,000) shall be treated as if it had been declared and paid in 1987 for all purposes of the Internal Revenue Code of 1986.

Newspapers.
26 USC 38 note.

SEC. 1012. AMENDMENTS RELATED TO TITLE XII OF THE REFORM ACT.

Corporations.

(a) AMENDMENTS RELATED TO SECTION 1201 OF THE REFORM ACT.—

(1)(A) Subparagraph (C) of section 904(d)(2) of the 1986 Code is amended to read as follows:

"(C) FINANCIAL SERVICES INCOME.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'financial services income' means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is—

"(I) described in clause (ii),

“(II) passive income (determined without regard to subclause (I) of subparagraph (A)(iii)), or

“(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest.

“(ii) GENERAL DESCRIPTION OF FINANCIAL SERVICES INCOME.—Income is described in this clause if such income is—

“(I) derived in the active conduct of a banking, financing, or similar business,

“(II) derived from the investment by an insurance company of its unearned premiums, reserves, ordinary and necessary for the proper conduct of its insurance business, or

“(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the country in which the corporation was created or organized.

“(iii) EXCEPTIONS.—The term ‘financial services income’ does not include—

“(I) any high withholding tax interest,

“(II) any dividend from a noncontrolled section 902 corporation, and

“(III) any export financing interest not described in clause (i)(III).”

(B) Clause (i) of section 864(d)(5)(A) of the 1986 Code is amended by striking out “(C)(iii)” and inserting in lieu thereof “(C)(iii)(III)”.

(2) Subparagraph (D) of section 904(d)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence: “Such term does not include any dividend from a noncontrolled section 902 corporation and does not include a financial services income.”

(3) Paragraph (3) of section 904(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(H) EXCEPTION FOR CERTAIN HIGH WITHHOLDING TAX INTEREST.—This paragraph shall not apply to any amount which—

“(i) without regard to this paragraph, is high withholding tax interest (including any amount treated as high withholding tax interest under paragraph (2)(B)(iii)), and

“(ii) would (but for this subparagraph) be treated as financial services income under this paragraph.

The amount to which this paragraph does not apply by reason of the preceding sentence shall not exceed the interest or equivalent income of the controlled foreign corporation taken into account in determining financial services income without regard to this subparagraph.”

(4) Subparagraph (E) of section 904(d)(3) of the 1986 Code is amended—

(A) by striking out the first sentence and inserting in lieu thereof the following: “If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to the de minimis rule) for any taxable year, for purposes of the

paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as income in a separate category, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income.”, and

(B) by striking out “income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation)” and inserting in lieu thereof “passive income”.

(5) Paragraph (2) of section 1201(e) of the Reform Act is amended by adding at the end thereof the following new subparagraph: 26 USC 904 note.

“(J) TREATMENT OF AFFILIATED GROUP FILING CONSOLIDATED RETURN.—For purposes of this paragraph, all members of an affiliated group of corporations filing a consolidated return shall be treated as 1 corporation.”

(6) Subparagraph (A) of section 904(d)(2) of the 1986 Code is amended—

(A) by striking out “The term” in clause (ii) and inserting in lieu thereof “Except as provided in clause (iii), the term”, and

(B) by adding at the end thereof the following new clause:

“(iv) CLARIFICATION OF APPLICATION OF SECTION 864(d)(6).—In determining whether any income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation.”

(7) Subparagraph (F) of section 904(d)(3) of the 1986 Code is amended to read as follows:

“(F) SEPARATE CATEGORY.—For purposes of this paragraph—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘separate category’ means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).

“(ii) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—

“(I) In determining whether any income of a controlled foreign corporation is in a separate category, subclause (III) of paragraph (2)(A)(iii) shall not apply.

“(II) Any income of the taxpayer which is treated as income in a separate category under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.”

(8) Clause (iii) of section 904(d)(2)(B) of the 1986 Code is amended to read as follows:

“(iii) REGULATIONS.—The Secretary may by regulations provide that—

“(I) amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax

interest where necessary to prevent avoidance of the purposes of this subparagraph, and

“(II) a tax shall not be treated as a withholding tax or other tax imposed on a gross basis if such tax is in the nature of a prepayment of a tax imposed on a net basis.”

(9) Clause (ii) of section 904(d)(2)(I) of the 1986 Code amended by striking out “except to the extent that” and all that follows down through “and” at the end thereof and inserting in lieu thereof the following:

“except that—

“(I) such taxes shall be treated as paid or accrued with respect to shipping income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income,

“(II) in the case of a person described in subparagraph (C)(i), such taxes shall be treated as paid or accrued with respect to financial services income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

“(III) such taxes shall be treated as paid or accrued with respect to high withholding tax interest to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and”.

(10) Clause (i) of section 904(d)(2)(E) of the 1986 Code amended by striking out “during which it was a controlled foreign corporation” and inserting in lieu thereof “during which it was a controlled foreign corporation and except as provided in regulations, the taxpayer was a United States shareholder of such corporation”.

(11) Subparagraph (E) of section 904(d)(1) of the 1986 Code amended by striking out “dividends” and inserting in lieu thereof “in the case of a corporation, dividends”.

(b) AMENDMENT RELATED TO SECTION 1202 OF THE REFORM ACT

(1) Paragraph (7) of section 902(c) of the 1986 Code amended—

(A) by striking out “section 960” and inserting in lieu thereof “section 960”, and

(B) by striking out “this section” the second place it appears and inserting in lieu thereof “this section of section 960”.

(2) Paragraph (1) of section 902(c) of the 1986 Code is amended by striking out “sections 964 and 986” and inserting in lieu thereof “sections 964(a) and 986”.

(3) For purposes of sections 902 and 960 of the 1986 Code, the increase in earnings and profits of any foreign corporation under section 1023(e)(3)(C) of the Reform Act shall be taken into account ratably over the 10-year period beginning with the corporation’s first taxable year beginning after December 31, 1986.

(4) Paragraph (3) of section 404A(d) of the 1986 Code amended by striking out “the amount determined” and inserting in lieu thereof “except as provided in regulations, the amount determined”.

(c) AMENDMENT RELATED TO SECTION 1203 OF THE REFORM ACT.—Paragraph (5) of section 904(f) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(F) DISPOSITIONS.—If any separate limitation loss for any taxable year is allocated against any separate limitation income for such taxable year, except to the extent provided in regulations, rules similar to the rules of paragraph (3) shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss.”

(d) AMENDMENTS RELATED TO SECTION 1211 OF THE REFORM ACT.—

(1) Subsection (d) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) COORDINATION WITH SUBSECTION (c).—

“(A) GAIN NOT IN EXCESS OF DEPRECIATION ADJUSTMENTS SOURCED UNDER SUBSECTION (c).—Notwithstanding paragraph (1), any gain from the sale of an intangible shall be sourced under subsection (c) to the extent such gain does not exceed the depreciation adjustments with respect to such intangible.

“(B) SUBSECTION (c) (2) NOT TO APPLY TO INTANGIBLES.—Paragraph (2) of subsection (c) shall not apply to any gain from the sale of an intangible.”

(2) Subparagraph (A) of section 865(e)(1) of the 1986 Code is amended by striking out “(d), or (f)” and inserting in lieu thereof “(d)(1)(B) or (3), or (f)”.

(3)(A) Clause (ii) of section 865(g)(1)(A) of the 1986 Code is amended by striking out “partnership.”.

(B) Subsection (h) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) TREATMENT OF PARTNERSHIPS.—In the case of a partnership, except as provided in regulations, this section shall be applied at the partner level.”

(4) Subsection (f) of section 865 of the 1986 Code is amended to read as follows:

“(f) STOCK OF AFFILIATES.—If—

“(1) a United States resident sells stock in an affiliate which is a foreign corporation,

“(2) such sale occurs in a foreign country in which such affiliate is engaged in the active conduct of a trade or business, and

“(3) more than 50 percent of the gross income of such affiliate for the 3-year period ending with the close of such affiliate's taxable year immediately preceding the year in which the sale occurred was derived from the active conduct of a trade or business in such foreign country,

any gain from such sale shall be sourced outside the United States. For purposes of paragraphs (2) and (3), the United States resident may elect to treat an affiliate and all other corporations which are wholly owned (directly or indirectly) by the affiliate as one corporation.”

(5) Effective with respect to taxable years beginning after December 31, 1987, subparagraph (B) of section 865(e)(2) of the 1986 Code is amended to read as follows:

“(B) EXCEPTION.—Subparagraph (A) shall not apply to any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office

or other fixed place of business of the taxpayer in a foreign country materially participated in the sale."

(6)(A) Subsection (g) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR CERTAIN STOCK SALES BY RESIDENTS OF PUERTO RICO.—Paragraph (2) shall not apply to the sale by an individual who was a bona fide resident of Puerto Rico during the entire taxable year of stock in a corporation if—

"(A) such corporation is engaged in the active conduct of a trade or business in Puerto Rico, and

"(B) more than 50 percent of its gross income for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year in which such sale occurred was derived from the active conduct of a trade or business in Puerto Rico.

For purposes of the preceding sentence, the taxpayer may elect to treat a corporation and all other corporations which are wholly owned (directly or indirectly) by such corporation as one corporation."

(B) Subsection (i) of section 865 of the 1986 Code is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in its place "and", and by adding at the end thereof the following new paragraph:

"(3) providing that, subject to such conditions (which shall include provisions comparable to section 877) as may be provided in such regulations, subsections (e)(1)(B) and (g)(2) shall not apply for purposes of sections 931, 933, and 936."

(7) Subparagraph (B) of section 864(c)(4) of the 1986 Code is amended by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in its place "or", and by adding at the end thereof the following new clause:

"(iii) is derived from the sale or exchange (outside the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer is located in a foreign country materially participated in such sale."

(8) Section 865 of the 1986 Code is amended by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively, and by inserting after subsection (g) the following subsection:

"(h) TREATMENT OF GAINS FROM SALE OF CERTAIN STOCK OR INTERESTS AND FROM CERTAIN LIQUIDATIONS.—

"(1) IN GENERAL.—In the case of gain to which this subsection applies—

"(A) such gain shall be sourced outside the United States but

"(B) subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such gain.

"(2) GAIN TO WHICH SUBSECTION APPLIES.—This subsection shall apply to—

“(A) GAIN FROM SALE OF CERTAIN STOCK OR INTANGIBLES.—
Any gain—

“(i) which is from the sale of stock in a foreign corporation or an intangible (as defined in subsection (d)(2)) and which would otherwise be sourced in the United States under this section,

“(ii) which, under a treaty obligation of the United States (applied without regard to this section), would be sourced outside the United States, and

“(iii) with respect to which the taxpayer chooses the benefits of this subsection.

“(B) GAIN FROM LIQUIDATION IN POSSESSION.—Any gain which is derived from the receipt of any distribution in liquidation of a corporation—

“(i) which is organized in a possession of the United States, and

“(ii) more than 50 percent of the gross income of which during the 3-taxable year period ending with the close of the taxable year immediately preceding the taxable year in which the distribution is received is from the active conduct of a trade or business in such possession.”

(9) Subparagraph (A) of section 865(e)(1) of the 1986 Code is amended by striking out “outside the United States” the first place it appears and inserting in lieu thereof “in a foreign country”.

(10) Subparagraph (B) of section 864(c)(4) of the 1986 Code is amended—

(A) by striking out “(including any gain or loss realized on the sale or exchange of such property)” in clause (i), and

(B) by striking out “, or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness” in clause (ii).

(11) Clause (i) of section 865(g)(1)(A) of the 1986 Code is amended to read as follows—

“(i) any individual who—

“(I) is a United States citizen or a resident alien and does not have a tax home (as defined in section 911(d)(3)) in a foreign country, or

“(II) is a nonresident alien and has a tax home (as so defined) in the United States, and”.

(12) Paragraph (2) of section 865(d) of the 1986 Code is amended by inserting “franchise,” after “trade brand,”.

(e) AMENDMENTS RELATED TO SECTION 1212 OF THE REFORM ACT.—

(1)(A) Paragraph (3) of section 883(c) of the 1986 Code is amended to read as follows:

“(3) SPECIAL RULES FOR PUBLICLY TRADED CORPORATIONS.—

“(A) EXCEPTION.—Paragraph (1) shall not apply to any corporation which is organized in a foreign country meeting the requirements of paragraph (1) or (2) of subsection (a) (as the case may be) and the stock of which is primarily and regularly traded on an established securities market in such foreign country, another foreign country meeting the requirements of such paragraph, or the United States.

“(B) TREATMENT OF STOCK OWNED BY PUBLICLY TRADED CORPORATION.—Any stock in another corporation which is owned (directly or indirectly) by a corporation meeting the

requirements of subparagraph (A) shall be treated as owned by individuals who are residents of the foreign country in which the corporation meeting the requirements of subparagraph (A) is organized."

(B) Paragraph (1) of section 883(c) of the 1986 Code is amended—

(i) by striking out "Paragraphs (1) and (2) of subsection (a)" and inserting in lieu thereof "Paragraph (1) or (2) of subsection (a) (as the case may be)", and

(ii) by striking out "such paragraphs (1) and (2)" and inserting in lieu thereof "such paragraph".

(2)(A) Paragraphs (1) and (2) of section 883(a) of the 1986 Code are each amended by striking out "to citizens of the United States and".

(B) Paragraphs (1) and (2) of section 872(b) of the 1986 Code are each amended by striking out "to citizens of the United States and to corporations organized in the United States" and inserting in lieu thereof "to individual residents of the United States".

(3)(A) The section heading for section 863 of the 1986 Code is amended to read as follows:

"SEC. 863. SPECIAL RULES FOR DETERMINING SOURCE."

(B) The table of sections for part I of subchapter N of chapter 1 of the 1986 Code is amended by striking out the item relating to section 863 and inserting in lieu thereof the following:

"Sec. 863. Special rules for determining source."

(4) Subsection (c) of section 862 is hereby repealed.

(5) Paragraphs (1) and (2) of section 872(b) of the 1986 Code and paragraphs (1) and (2) of section 883(a) of the 1986 Code are each amended by striking out "operation" and inserting in lieu thereof "international operation".

(6) Paragraph (1) of section 887(b) of the 1986 Code is amended—

(A) by striking out "under section 863(c)" and inserting in lieu thereof "under section 863(c)(2)", and

(B) by adding at the end thereof the following new sentence: "To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply."

(f) **AMENDMENT RELATED TO SECTION 1213 OF THE REFORM ACT.**—Paragraph (2) of section 863(e) of the 1986 Code is amended by striking out "foreign country" each place it appears and inserting in lieu thereof "foreign country (or possession of the United States)".

(g) **AMENDMENTS RELATED TO SECTION 1214 OF THE REFORM ACT.**—

(1)(A) Paragraph (1) of section 1214(d) of the Reform Act is amended to read as follows:

"(1) **IN GENERAL.**—The amendments made by this section shall apply to payments made in a taxable year of the payor beginning after December 31, 1986."

(B) A taxpayer may elect not to have the amendment made by subparagraph (A) apply and to have section 1214(d)(1) of the Reform Act apply as in effect before such amendment. Such election shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

(2) Subparagraph (B) of section 1214(d)(2) of the Reform Act is amended by striking out "section 904(d)(2)(G)" and inserting in lieu thereof "section 904(d)(2)(H)".

(3) Subparagraph (B) of section 861(c)(1) of the 1986 Code is amended—

(A) by striking out "subchapter" in clause (i) and inserting in lieu thereof "subchapter" or, in the case of a corporation, is attributable to income so derived by a subsidiary of such corporation",

(B) by striking out "or chain of subsidiaries of such corporation" in clause (ii), and

(C) by adding at the end thereof the following new sentence:

For purposes of this subparagraph, the term 'subsidiary' means any corporation in which the corporation referred to in this subparagraph owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting '50 percent' for '80 percent' each place it appears)."

(4) Paragraph (1) of section 2105(b) of the 1986 Code is amended by striking out "section 861(c), if any interest thereon could be treated by reason of section 861(a)(1)(A) as income from sources without the United States" and inserting in lieu thereof "section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1)".

(5) Paragraph (2) of section 864(c) of the 1986 Code is amended striking out the last sentence.

(6) Paragraph (3) of section 907(c) of the 1986 Code is amended:

(A) by striking out subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively, and

(B) by striking out "and dividends described in subparagraph (B)".

(7) Subsection (a) of section 1442 of the 1986 Code is amended—

(A) by striking out "and the references in" and inserting in lieu thereof "the references in", and

(B) by inserting before the period at the end thereof the following: ", and the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d)".

AMENDMENTS RELATED TO SECTION 1215 OF THE REFORM ACT.—

(1) Paragraph (4) of section 864(e) of the 1986 Code is amended read as follows:

"(4) BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS ADJUSTED FOR EARNINGS AND PROFITS CHANGES.—

"(A) IN GENERAL.—For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any stock in a nonaffiliated 10-percent owned corporation shall be—

"(i) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

"(ii) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

“(B) NONAFFILIATED 10-PERCENT OWNED CORPORATION.—For purposes of this paragraph, the term ‘nonaffiliated 10-percent owned corporation’ means any corporation if—

“(i) such corporation is not included in the taxpayer’s affiliated group, and

“(ii) members of such affiliated group own 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

“(C) EARNINGS AND PROFITS OF LOWER TIER CORPORATIONS TAKEN INTO ACCOUNT.—

“(i) **IN GENERAL.—**If, by reason of holding stock in a nonaffiliated 10-percent owned corporation, the taxpayer is treated under clause (iii) as owning stock in another corporation with respect to which the stock ownership requirements of clause (ii) are met, the adjustment under subparagraph (A) shall include an adjustment for the amount of the earnings and profits (or deficit therein) of such other corporation which are attributable to the stock the taxpayer is so treated as owning and to the period during which the taxpayer is treated as owning such stock.

“(ii) **STOCK OWNERSHIP REQUIREMENTS.—**The stock ownership requirements of this clause are met with respect to any corporation if members of the taxpayer’s affiliated group own (directly or through the application of clause (iii)) 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

“(iii) **STOCK OWNED THROUGH ENTITIES.—**For purposes of this subparagraph, stock owned (directly or indirectly) by a corporation, partnership, or trust shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence, shall, for purposes of applying such sentence, be treated as actually owned by such person.

“(D) COORDINATION WITH SUBPART F, ETC.—For purposes of this paragraph, proper adjustment shall be made to the earnings and profits of any corporation to take into account any earnings and profits included in gross income under section 951 or under any other provision of this title and reflected in the adjusted basis of the stock.”

(2)(A) Paragraph (1) of section 864(e) of the 1986 Code is amended by striking out “from sources outside the United States”.

(B) Subsection (h) of section 936 of the 1986 Code is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(7) **SECTION 864(e)(1) NOT TO APPLY.—**This subsection shall be applied as if section 864(e)(1) (relating to treatment of affiliated groups) had not been enacted.”

(C) The heading for part I of subchapter N of chapter 1 of the 1986 Code is amended to read as follows:

PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME”.

(D) The table of parts for subchapter N of chapter 1 of the 1986 Code is amended by striking out the item relating to part I and inserting in lieu thereof the following:

“Part I. Source rules and other general rules relating to foreign income.”

(3) Paragraph (3) of section 864(e) of the 1986 Code is amended striking out the last sentence and inserting in lieu thereof the following: “A similar rule shall apply in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).”

(4)(A) Paragraph (5) of section 864(e) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(D) TREATMENT OF BANK HOLDING COMPANIES.—To the extent provided in regulations—

“(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), and

“(ii) any subsidiary of a financial institution described in section 581 or 591 or of any bank holding company if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (C).”

(B) Subparagraph (B) of section 864(e)(5) of the 1986 Code is amended by adding at the end thereof the following new sentence: “This subparagraph shall not apply for purposes of paragraph (6).”

(5) Paragraph (6) of section 864(e) of the 1986 Code is amended striking out “directly allocable and apportioned” and inserting in lieu thereof “directly allocable or apportioned”.

(6)(A) Paragraph (7) of section 864(e) of the 1986 Code is amended by striking out “and” at the end of subparagraph (B), striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma, and by adding at the end thereof the following new subparagraphs:

“(D) for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A,

“(E) for appropriate adjustments in the application of paragraph (3) in the case of an insurance company, and

“(F) that this subsection shall not apply for purposes of any provision of this subchapter to the extent the Secretary determines that the application of this subsection for such purposes would not be appropriate.”

(B) Subsection (e) of section 864 of the 1986 Code is amended striking out “(except as provided in regulations)” in the material preceding paragraph (1).

26 USC 864 note.

(7) Paragraph (2) of section 1215(c) of the Reform Act is amended to read as follows:

“(2) TRANSITIONAL RULES.—

“(A) GENERAL PHASE-IN.—

“(i) IN GENERAL.—In the case of the 1st 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount.

“(ii) GENERAL PHASE-IN AMOUNT.—Except as provided in clause (iii), the general phase-in amount for purposes of clause (i) is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

In the case of the:	The applicable percentage is:
1st taxable year.....	75
2nd taxable year.....	50
3rd taxable year.....	25.

“(iii) LOWER LIMIT WHERE TAXPAYER REDUCES INDEBTEDNESS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985. To the extent provided in regulations, the average amount of indebtedness outstanding during any month shall be used (in lieu of the amount outstanding as of the close of such month) for purposes of the preceding sentence.

“(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

“(i) IN GENERAL.—In the case of the 1st 5 taxable years of the taxpayer beginning after December 31, 1986—

“(I) subparagraph (A) shall not apply for purposes of paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section), but

“(II) such paragraph (1) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount.

“(ii) SPECIAL PHASE-IN AMOUNT.—The special phase-in amount for purposes of clause (i) is the sum of—

“(I) the general phase-in amount as determined for purposes of subparagraph (A),

“(II) the 5-year phase-in amount, and

“(III) the 4-year phase-in amount.

For purposes of applying this subparagraph to interest expense attributable to any month, the special phase-in amount shall in no event exceed the limitation determined under subparagraph (A)(iii).

“(iii) 5-YEAR PHASE-IN AMOUNT.—The 5-year phase-in amount is the lesser of—

“(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount, or

“(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount reduced by paydowns:

“In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	8½	10
2nd taxable year	16½	25
3rd taxable year	25	50
4th taxable year	33½	100
5th taxable year	16½	100.

“(iv) 4-YEAR PHASE-IN AMOUNT.—The 4-year phase-in amount is the lesser of—

“(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount, or

“(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount reduced by paydowns to the extent such paydowns exceed the 5-year debt amount:

“In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	5	6¼
2nd taxable year	10	16½
3rd taxable year	15	37½
4th taxable year	20	100
5th taxable year	0	0.

“(v) 5-YEAR DEBT AMOUNT.—The term ‘5-year debt amount’ means the excess (if any) of—

“(I) the amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

“(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1983.

The 5-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

“(vi) 4-YEAR DEBT AMOUNT.—The term ‘4-year debt amount’ means the excess (if any) of—

“(I) the amount referred to in clause (v)(II), over

“(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1982.

The 4-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the 5-year debt amount.

"(vii) **PAYDOWNS.**—For purposes of applying this subparagraph to interest expenses attributable to a month, the term 'paydowns' means the excess (if any) of—

"(I) the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

"(II) the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985, to the extent provided in regulations under this subparagraph (A)(iii), the average amount of indebtedness outstanding during any such month.

"(C) **COORDINATION OF SUBPARAGRAPHS (A) AND (B).**—In applying subparagraph (B), there shall first be taken into account indebtedness to which subparagraph (A) applies.

"(D) **SPECIAL RULES.**—

"(i) In the case of the 1st 9 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the applicable percentage (determined under the following table) of the indebtedness described in clause (iii) or

"In the case of the:

	The applicable percentage
1st taxable year	90
2nd taxable year	80
3rd taxable year	70
4th taxable year	60
5th taxable year	50
6th taxable year	40
7th taxable year	30
8th taxable year	20
9th taxable year	10.

"(ii) The provisions of this subparagraph shall apply in lieu of the provisions of subparagraphs (A) and (B).

Oklahoma.

"(iii) **INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.**—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

New York.

"(iv) **INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.**—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a)), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

"(E) **TREATMENT OF AFFILIATED GROUP.**—For purposes of this paragraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as added by this section) shall be treated as 1 taxpayer whether or not such members file a consolidated return.

"(F) **ELECTION TO HAVE PARAGRAPH NOT APPLY.**—A taxpayer may elect (at such time and in such manner as

Secretary of the Treasury or his delegate may prescribe) to have this paragraph not apply. In the case of members of the same affiliated group (as so defined), such an election may be made only if each member consents to such election."

AMENDMENTS RELATED TO SECTION 1221 OF THE REFORM ACT.—

(A) Subparagraph (C) of section 953(c)(3) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986."

(B) Clause (i) of section 953(c)(3)(D) of the 1986 Code is amended to read as follows:

"(i) PERIOD DURING WHICH ELECTION IN EFFECT.—

"(I) IN GENERAL.—Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(II) TERMINATION.—If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year."

(C) Paragraph (3) of section 953(c) of the 1986 Code is amended adding at the end thereof the following new subparagraph:

"(E) DISQUALIFIED CORPORATION.—For purposes of this paragraph the term 'disqualified corporation' means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for an uninterrupted period of 30 days or more during such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection) owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year."

(A) Paragraph (1) of section 953(c) of the 1986 Code is amended by striking out "and" at the end of subparagraph (A), striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(C) the pro rata share referred to in section 951(a)(1)(A)(i) shall be determined under paragraph (5) of this subsection."

(B) Subsection (c) of section 953 of the 1986 Code is amended redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

(5) DETERMINATION OF PRO RATA SHARE.—

"(A) IN GENERAL.—The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

"(i) the amount which would be determined under paragraph (2) of section 951(a) if—

"(I) only related person insurance income were taken into account,

"(II) stock owned (within the meaning of section 958(a)) by United States shareholders on the last day of the taxable year were the only stock in the foreign corporation, and

"(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

"(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

Regulations.

"(B) COORDINATION WITH OTHER PROVISIONS.—The Secretary shall prescribe regulations providing for such modifications to the provisions of this subpart as may be necessary or appropriate by reason of subparagraph (A)."

(3)(A) Paragraph (2) of section 953(c) of the 1986 Code is amended by striking out "with respect to which the primary insured is" and inserting in lieu thereof "with respect to which the person (directly or indirectly) insured is".

(B) Subparagraph (A) of section 953(c)(3) of the 1986 Code is amended—

(i) by striking out "persons who are the primary insured" and inserting in lieu thereof "persons who are (directly or indirectly) insured", and

(ii) by striking out "to any such primary insured" and inserting in lieu thereof "to any such person".

26 USC 953 note.

(C) The amendments made by this paragraph to the extent such amendments add the phrase "(directly or indirectly)" shall apply only to taxable years beginning after December 31, 1987.

(4)(A) Subsection (c) of section 953 of the 1986 Code (as amended by paragraph (2)) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) RELATED PERSON.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'related person' has the meaning given such term by section 954(d)(3).

"(B) TREATMENT OF CERTAIN LIABILITY INSURANCE POLICIES.—In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons."

(B) Paragraphs (2) and (3)(A) of section 953(c) of the 1986 Code are each amended by striking out "(within the meaning of section 954(d)(3))".

(5) Paragraph (2) of section 953(c) of the 1986 Code is amended by striking out "insurance income attributable" and inserting in lieu thereof "insurance income (within the meaning of subsection (a)) attributable".

26 USC 952 note.

(6) For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act.

(7) Subsection (b) of section 953 of the 1986 Code is amended—
 (A) by striking out paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively,

(B) by striking out subparagraph (A) of paragraph (1) (as so redesignated) and inserting in lieu thereof the following:

“(A) The small life insurance company deduction.”, and
 (C) by striking out “(other than those taken into account under paragraph (3))” in paragraph (3) (as so redesignated).

(8) Subparagraph (B) of section 953(c)(3) of the 1986 Code is amended—

(A) by striking out “related person insurance income” and inserting in lieu thereof “related person insurance income (determined on a gross basis)”, and

(B) by striking out “its insurance income” and inserting in lieu thereof “its insurance income (as so determined)”.

(9) Subclause (II) of section 953(c)(3)(C)(i) of the 1986 Code is amended—

(A) by striking out “all benefits” and inserting in lieu thereof “all benefits (other than with respect to section 884)”, and

(B) by striking out “under any income tax treaty” and inserting in lieu thereof “granted by the United States under any treaty”.

(10) Paragraph (7) of section 861(a) of the 1986 Code is amended to read as follows:

“(7) Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the issuing (or reinsuring) of any insurance or annuity contract—

“(A) in connection with property in, liability arising out of an activity in, or in connection with the lives or health of residents of, the United States, or

“(B) in connection with risks not described in subparagraph (A) as a result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to issuing (or reinsuring) any insurance or annuity contract in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, the United States.”

(11) Subparagraph (A) of section 955(a)(2) of the 1986 Code is amended by striking out “beginning before 1987” and inserting in lieu thereof “beginning before 1987 (to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986)”.

(12) Paragraphs (6) and (7) of section 954(b) of the 1986 Code are each amended by striking out “(determined without regard to the exclusion under paragraph (2) of this subsection)”.

(13)(A) Subparagraph (C) of section 1221(g)(3) of the Reform Act is amended—

(i) by striking out “July 9” and inserting in lieu thereof “June 9”, and

(ii) by striking out “March 31, 1982” and inserting in lieu thereof “November 3, 1981”.

(B) Subparagraph (D) of section 1221(g)(3) of the Reform Act is amended—

(i) by striking out “as of August 16, 1986, under a reinsurance contract in effect on such date” and inserting in lieu thereof “under a reinsurance contract”,

(ii) by striking out “the preceding sentence” and inserting in lieu thereof “this subparagraph”, and

(iii) by adding at the end thereof the following: “For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation’s proportionate share of \$27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph).”

(14)(A) Paragraph (3) of section 954(d) of the 1986 Code is amended by striking out “50 percent or more” each place it appears and inserting in lieu thereof “more than 50 percent”.

(B) Clause (ii) of section 861(c)(2)(B) of the 1986 Code is amended to read as follows:

“(ii) such section shall be applied by substituting ‘10 percent or more’ for ‘more than 50 percent’ each place it appears.”

(15) Subsection (b) of section 951 of the 1986 Code is amended by striking out “section 957(d)” and inserting in lieu thereof “section 957(c)”.

(16) Subsection (c) of section 952 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) SPECIAL RULE FOR DETERMINING EARNINGS AND PROFITS.—For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.”

(17) Subparagraph (A) of section 881(c)(4) of the 1986 Code is amended by striking out clauses (ii), (iii), (iv), and (v) and inserting in lieu thereof the following:

“(ii) Paragraph (4) of section 954(b) (relating to exception for certain income subject to high foreign taxes).

“(iii) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).”

(18) Subparagraph (B) of section 954(c)(1) of the 1986 Code is amended by striking out “or” at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

“(ii) which is an interest in a trust, partnership, or REMIC, or”.

(19)(A) Subsection (a) of section 6046 of the 1986 Code is amended by striking out “and” at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

“(3) each person (not described in paragraph (2)) who, at any time after January 1, 1987, is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and”.

(B) Subsection (b) of section 6046 of the 1986 Code is amended by striking out "subsection (a)(2)" and inserting in lieu thereof paragraph (2) or (3) of subsection (a)".

(C) Subsection (a) of section 6046 of the 1986 Code is amended by adding at the end thereof the following new sentence:

In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 1361, paragraph (1) shall be treated as including a reference to each United States person who is an officer or director of such corporation.

(20) Subparagraph (B) of section 954(c)(1) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following:

In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph. Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(1) also shall not be taken into account under this subparagraph."

(21) Subsection (c) of section 953 (as amended by this subsection) is amended by striking out paragraph (7) and inserting in lieu thereof the following:

"(7) COORDINATION WITH SECTION 1248.—For purposes of section 1248, if any person is (or would be but for paragraph (3)) treated under paragraph (1) as a United States shareholder with respect to any foreign corporation which would be taxed under subchapter L if it were a domestic corporation and which is (or would be but for paragraph (3)) treated under paragraph (1) as a controlled foreign corporation—

"(A) such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation, and

"(B) such foreign corporation shall be treated as a controlled foreign corporation.

"(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

"(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation."

(22) Subclause (III) of section 952(c)(1)(B)(iii) of the 1986 Code is amended by striking out "insurance income" and inserting in lieu thereof "insurance income or foreign personal holding company income,".

(23) Clause (iii) of section 952(c)(1)(B) of the 1986 Code is amended by redesignating subclauses (III) and (IV) as subclauses (V) and (VI), respectively, and by inserting after subclause (II) the following new subclauses:

“(III) foreign base company sales income,

“(IV) foreign base company services income.”.

(24) Clause (ii) of section 952(c)(1)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: “In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that ‘1982’ shall be substituted for ‘1962’.”

(25)(A) Paragraph (1) of section 952(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) CERTAIN DEFICITS OF MEMBER OF THE SAME CHAIN OF CORPORATIONS MAY BE TAKEN INTO ACCOUNT.—

“(i) IN GENERAL.—A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

“(ii) QUALIFIED CHAIN MEMBER.—For purposes of this subparagraph, the term ‘qualified chain member’ means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if—

“(I) all the stock of such other corporation (other than directors’ qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or

“(II) all the stock of such controlled foreign corporation (other than directors’ qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.

“(iii) COORDINATION.—This subparagraph shall be applied after subparagraphs (A) and (B).”

(B) Subparagraph (B) of section 954(c)(3) of the 1986 Code is amended by inserting before the period at the end thereof the following: “or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation”.

(j) AMENDMENT RELATED TO SECTION 1224 OF THE REFORM ACT.—Paragraph (2) of section 901(g) of the 1986 Code and section 936(d)(3)(B) of the 1986 Code are each amended by striking out “section 957(c)” and inserting in lieu thereof “section 957(c) (as in

on the day before the date of the enactment of the Tax Reform Act of 1986)".

(k) **AMENDMENT RELATED TO SECTION 1225 OF THE REFORM ACT.**—Section (c) of section 1225 of the Reform Act is amended by striking out "March 1, 1986" and inserting in lieu thereof "January 1, 1986".

26 USC 535 note.

(l) **AMENDMENTS RELATED TO SECTION 1226 OF THE REFORM ACT.**—

(1) Subsection (a) of section 246A of the 1986 Code is amended by striking out the last sentence.

(2)(A) Paragraph (8) of section 245 of the 1986 Code is amended to read as follows:

"(8) **DISALLOWANCE OF FOREIGN TAX CREDIT.**—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the United States-source portion of any dividend received by a corporation from a qualified 10-percent-owned foreign corporation."

(B) Subsection (a) of section 245 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(10) **COORDINATION WITH TREATIES.**—If—

"(A) any portion of a dividend received by a corporation from a qualified 10-percent-owned foreign corporation would be treated as from sources in the United States under paragraph (9),

"(B) under a treaty obligation of the United States (applied without regard to this subsection), such portion would be treated as arising from sources outside the United States, and

"(C) the taxpayer chooses the benefits of this paragraph, this subsection shall not apply to such dividend (but subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such portion of such dividend)."

(3) Subsection (a) of section 245 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) **COORDINATION WITH SECTION 1248.**—For purposes of this subsection, the term 'dividend' does not include any amount treated as a dividend under section 1248."

(m) **AMENDMENTS RELATED TO SECTION 1228 OF THE REFORM ACT.**—

(1) Subsection (a) of section 1228 of the Reform Act is amended by striking out "and" at the end of paragraph (3), and by striking out paragraph (4) and inserting in lieu thereof the following:

26 USC 897 note.

"(4) the transfer, sale, exchange, or other disposition is part of a single integrated plan, whereby the stock of the corporation described in paragraph (1) becomes owned directly by the 2 corporations specifically referred to in subsection (b) or by such 2 corporations and by 1 or both of their jointly owned direct subsidiaries,

"(5) within 20 days after each transfer, sale, exchange, or other disposition, the person making such transfer, sale, exchange, or other disposition notifies the Internal Revenue Service of the transaction, the date of the transaction, the basis of the stock involved, the holding period for such stock, and such other information as the Internal Revenue Service may require, and

“(6) the integrated plan is completed before the date 4 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

In the case of any underpayment attributable to a failure to meet any requirement of this subsection, the period during which such underpayment may be assessed shall in no event expire before the date 5 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.”

(2) Subsection (c) of section 1228 of the Reform Act is hereby repealed.

(n) AMENDMENTS RELATED TO SECTION 1231 OF THE REFORM ACT.—

26 USC 936 note.

(1) Subparagraph (A) of section 1231(g)(2) of the Reform Act is amended by adding at the end thereof the following new sentence: “In the case of any transfer (or license) which is not to a foreign person, the preceding sentence shall be applied by substituting ‘August 16, 1986’ for ‘November 16, 1985’.”

(2) Subparagraph (B) of section 1231(g)(2) of the Reform Act is amended by striking out “was made” and inserting in lieu thereof “, if any, was made”.

26 USC 936 note.

(3) Subsection (g) of section 1231 of the Reform Act is amended by adding at the end thereof the following new paragraph:

“(5) TRANSITIONAL RULE FOR INCREASE IN GROSS INCOME TEST.—

“(A) IN GENERAL.—If—

“(i) a corporation fails to meet the requirements of subparagraph (B) of section 936(a)(2) of the Internal Revenue Code of 1986 (as amended by subsection (d)(1)) for any taxable year beginning in 1987 or 1988,

“(ii) such corporation would have met the requirements of such subparagraph (B) if such subparagraph had been applied without regard to the amendment made by subsection (d)(1), and

“(iii) 75 percent or more of the gross income of such corporation for such taxable year (or, in the case of a taxable year beginning in 1988, for the period consisting of such taxable year and the preceding taxable year) was derived from the active conduct of a trade or business within a possession of the United States, such corporation shall nevertheless be treated as meeting the requirements of such subparagraph (B) for such taxable year if it elects to reduce the amount of the qualified possession source investment income for the taxable year by the amount of the shortfall determined under subparagraph (B) of this paragraph.

“(B) DETERMINATION OF SHORTFALL.—The shortfall determined under this subparagraph for any taxable year is an amount equal to the excess of—

“(i) 75 percent of the gross income of the corporation for the 3-year period (or part thereof) referred to in section 936(a)(2)(A) of such Code, over

“(ii) the amount of the gross income of such corporation for such period (or part thereof) which was derived from the active conduct of a trade or business within a possession of the United States.

“(C) SPECIAL RULE.—Any income attributable to the investment of the amount not treated as qualified possession source investment income under subparagraph (A)

shall not be treated as qualified possession source investment income for any taxable year.”

(4) Subparagraph (B) of section 1231(a)(1) of the Reform Act is amended by striking out “at the end thereof” and inserting in lieu thereof “at the end of the material relating to payment of cost sharing”.

(5)(A) Clause (ii) of section 936(d)(4)(A) of the 1986 Code is amended to read as follows: Puerto Rico.

“(ii) in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico pursuant to regulations issued by such Commissioner.”

(B) Clauses (i) and (ii) of section 936(d)(4)(C) of the 1986 Code are each amended by striking out “the Secretary of the Treasury of Puerto Rico” and inserting in lieu thereof “the Commissioner of Financial Institutions of Puerto Rico”.

AMENDMENT RELATED TO SECTION 1234 OF THE REFORM ACT.—Section (d) of section 6039E of the 1986 Code is amended by adding at the end thereof the following new sentence:

“Nothing in the preceding sentence shall be construed to require the disclosure of information which is subject to section 245A of the Migration and Nationality Act (as in effect on the date of the enactment of this sentence).”

AMENDMENTS RELATED TO SECTION 1235 OF THE REFORM ACT.—

(1) Paragraph (1) of section 1291(d) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—This section shall not apply with respect to any distribution paid by a passive foreign investment company, or any disposition of stock in a passive foreign investment company, if such company is a qualified electing fund for each of its taxable years—

“(A) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

“(B) which includes any portion of the taxpayer’s holding period.”

(2) Subsection (c) of section 1296 of the 1986 Code is amended by striking out “owns at least” and inserting in lieu thereof “owns (directly or indirectly) at least”.

(3) Paragraph (3) of section 1291(b) of the 1986 Code is amended by striking out “and” at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new subparagraph:

“(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 551(d), 959(a), or 1293(c).”

(4) Paragraph (2) of section 1294(c) of the 1986 Code is amended—

(A) by striking out “is disposed of” in subparagraph (A) and inserting in lieu thereof “is transferred”,

(B) by striking out “such disposition or cessation” each place it appears and inserting in lieu thereof “such transfer or cessation”, and

(C) by striking out “DISPOSITIONS” in the paragraph heading and inserting in lieu thereof “TRANSFERS”.

(5) Paragraph (1) of section 1296(b) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘passive income’ means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c).”

(6)(A) Subsection (f) of section 1291 of the 1986 Code is amended to read as follows:

“(f) RECOGNITION OF GAIN.—To the extent provided in regulations, in the case of any transfer of stock in a passive foreign investment company where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

“(1) the fair market value of such stock, over

“(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of any such stock for gain recognized under the preceding sentence.”

(B) Subsection (e) of section 1291 of the 1986 Code is amended by striking out “Rules similar” and inserting in lieu thereof “Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar”.

(7)(A) Paragraphs (4) and (5) of section 1291(a) of the 1986 Code are hereby repealed.

(B) Section 1291 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(g) COORDINATION WITH FOREIGN TAX CREDIT RULES.—

“(1) IN GENERAL.—If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign investment company—

“(A) the amount of such distribution shall be determined for purposes of this section with regard to section 78,

“(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer’s holding period for the stock, and

“(C) to the extent—

“(i) that such excess distribution taxes are allocated to a taxable year referred to in subsection (a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

“(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904(d) and not below zero) the increase in tax determined under subsection (c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) CREDITABLE FOREIGN TAXES.—The term ‘creditable foreign taxes’ means, with respect to any distribution—

“(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

“(ii) any withholding tax imposed with respect to such distribution,

but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

“(B) EXCESS DISTRIBUTION TAXES.—The term ‘excess distribution taxes’ means, with respect to any distribution, the

portion of the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

“(C) SECTION 1248 GAIN.—The rules of this subsection also shall apply in the case of any gain which but for this section would be includible in gross income as a dividend under section 1248.”

(8) Section 1294 of the 1986 Code is amended by adding at the end thereof the following new subsection:

(C) CROSS REFERENCE.—

“For provisions providing for interest for the period of the extension under this section, see section 6601.”

(9) Paragraph (2) of section 1291(e) of the 1986 Code is amended by striking out “not” the second place it appears.

(10)(A) Subsection (a) of section 1297 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) OPTIONS.—To the extent provided in regulations, if any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.”

(B) Paragraph (5) of section 1297(a) of the 1986 Code (as redesignated by subparagraph (A)) is amended by striking out “paragraph (2) or (3)” and inserting in lieu thereof “paragraph (2), (3), or (4)”.

(11) Paragraph (3) of section 904(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(I) LOOK-THRU APPLIES TO PASSIVE FOREIGN INVESTMENT COMPANY INCLUSION.—If—

“(i) a passive foreign investment company is a controlled foreign corporation, and

“(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.”

(12) Clause (ii) of section 1291(a)(1)(B) of the 1986 Code is amended to read as follows:

“(ii) any period in the taxpayer’s holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a passive foreign investment company, and”.

(13) Subparagraph (A) of section 1291(b)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).”

(14) Subparagraph (A) of section 1291(a)(3) of the 1986 Code is amended by striking out “in the case of an excess distribution”

and inserting in lieu thereof "for purposes of applying section to an excess distribution".

(15) Subsection (b) of section 1293 of the 1986 Code is amended by adding at the end thereof the following new sentence: "the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in earnings of such fund, pro rata shares may be determined using such shorter period."

(16) Subparagraph (B) of section 1296(b)(2) of the 1986 Code is amended by striking out "by a corporation which" and inserting in lieu thereof "by a corporation which is predominantly engaged in an insurance business and which".

(17) Paragraph (5) of section 1297(b) of the 1986 Code is amended to read as follows:

"(5) APPLICATION OF PART WHERE HELD BY OTHER ENTITY.—

"(A) IN GENERAL.—Under regulations, in any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of subsection (a)—

"(i) any disposition by the United States person or person owning such stock which results in the United States person being treated as no longer owning such stock, or

"(ii) any disposition of property in respect of stock to the person holding such stock, shall be treated as a disposition to, the United States person with respect to the stock in the passive foreign investment company.

"(B) AMOUNT TREATED IN SAME MANNER AS PREVIOUSLY TAXED INCOME.—Rules similar to the rules of section 951 shall apply to any amount described in subparagraph (a) and to any amount included in gross income under section 1293(a) (or which would have been so included but for section 951(f)) in respect of stock which the taxpayer treated as owning under subsection (a)."

(18) Subsection (e) of section 1293 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) DETERMINATION OF EARNINGS AND PROFITS.—The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 301. Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund."

(19) Subsection (d) of section 1248 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(7) AMOUNTS INCLUDED IN GROSS INCOME UNDER SECTION 1293.—Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 1293 with respect to the stock so exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount under section 1293(c)."

(20) Paragraph (6) of section 1297(b) of the 1986 Code is amended by striking out "If a" and inserting in lieu thereof "Except as provided in regulations, if a".

(21) Section 1246 of the 1986 Code is amended by redesignating the subsection relating to information with respect to certain foreign investment companies as subsection (f), by redesignating the subsection relating to coordination with section 1248 as subsection (g), and by redesignating the subsection relating to cross reference as subsection (h).

(22) Subparagraph (A) of section 1297(b)(3) of the 1986 Code is amended to read as follows:

“(A) neither such corporation (nor any predecessor) was a passive foreign investment company for any prior taxable year.”

(23) Subsection (c) of section 1293 of the 1986 Code is amended by striking out “shall be treated as a distribution which is not a dividend” and inserting in lieu thereof “shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits”.

(24) Subsection (b) of section 1297 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(8) TREATMENT OF CERTAIN FOREIGN CORPORATIONS OWNING STOCK IN 25-PERCENT OWNED DOMESTIC CORPORATION.—

“(A) IN GENERAL.—If—

“(i) a foreign corporation is subject to the tax imposed by section 531 (or waives any benefit under any treaty which would otherwise prevent the imposition of such tax), and

“(ii) such foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation, for purposes of determining whether such foreign corporation is a passive foreign investment company, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

“(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term ‘qualified stock’ means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust.”

(25) Section 1294 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(f) TREATMENT OF LOANS TO SHAREHOLDER.—For purposes of this section and section 1293, any loan by a qualified electing fund (directly or indirectly) to a shareholder of such fund shall be treated as a distribution to such shareholder.

(26)(A) Paragraph (2) of section 1296(b) of the 1986 Code is amended by striking out “or” at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof “, or”, and by adding at the end thereof the following:

“(C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income.

For purposes of subparagraph (C), the term 'related person' has the meaning given such term by section 954(d)(3) determined by substituting 'foreign corporation' for 'controlled foreign corporation' each place it appears in section 954(d)(3)."

(B) The paragraph heading for paragraph (2) of section 1296(b) of the 1986 Code is amended by striking out "EXCEPTION FOR CERTAIN BANKS AND INSURANCE COMPANIES" and inserting in lieu thereof "EXCEPTIONS".

(27) Subsection (a) of section 1296 of the 1986 Code is amended by adding at the end thereof the following new sentences: "A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary."

(28) Paragraph (2) of section 1291(d) of the 1986 Code is amended by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) ADDITIONAL ELECTION FOR SHAREHOLDER OF CONTROLLED FOREIGN CORPORATIONS.—

"(i) IN GENERAL.—If—

"(I) a passive foreign investment company becomes a qualified electing fund for a taxable year which begins after December 31, 1986,

"(II) the taxpayer holds stock in such company on the first day of such taxable year, and

"(III) such company is a controlled foreign corporation (as defined in section 957(a)), the taxpayer may elect to include in gross income as a dividend received on such first day an amount equal to the portion of the post-1986 earnings and profits of such company attributable (under regulations prescribed by the Secretary) to the stock in such company held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution and shall be allocated under subsection (a)(1)(A) only to days during periods taken into account in determining the post-1986 earnings and profits so attributable.

"(ii) POST-1986 EARNINGS AND PROFITS.—For purposes of clause (i), the term 'post-1986 earnings and profits' means earnings and profits which were accumulated in taxable years of such company beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the company was a passive foreign investment company.

"(iii) COORDINATION WITH SECTION 959(e).—For purposes of section 959(e), any amount included in gross income under this subparagraph shall be treated as included in gross income under section 1248(a).

"(C) ADJUSTMENTS.—In the case of any stock to which subparagraph (A) or (B) applies—

"(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

“(ii) the taxpayer’s holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph.”

(29)(A) Clause (ii) of section 904(d)(2)(A) of the 1986 Code is amended by striking out “or section 1293” and inserting in lieu thereof “or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293”.

(B) Subparagraph (E) of section 904(d)(2) of the 1986 Code is amended by adding at the end thereof the following new clause:

“(iii) TREATMENT OF INCLUSIONS UNDER SECTION 1293.—If any foreign corporation is a non-controlled section 902 corporation with respect to the taxpayer, any inclusion under section 1293 with respect to such corporation shall be treated as a dividend from such corporation.”

(30) Clause (ii) of section 864(b)(2)(A) of the 1986 Code is amended by striking out “section 542(c)(7)” and inserting in lieu thereof “section 542(c)(7), 542(c)(10),”.

(31) Paragraph (1) of section 1291(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: “Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.”

(32) Section 1293 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(g) OTHER SPECIAL RULES.—

“(1) EXCEPTION FOR CERTAIN INCOME.—For purposes of determining the amount included in the gross income of any person under this section, the ordinary earnings and net capital gain of a qualified electing fund shall not include any item of income received by such fund if—

“(A) such fund is a controlled foreign corporation (as defined in section 957(a)) and such person is a United States shareholder (as defined in section 951(b)) in such fund, and

“(B) such person establishes to the satisfaction of the Secretary that—

“(i) such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11, or

“(ii) such income is—

“(I) from sources within the United States,

“(II) effectively connected with the conduct by the qualified electing fund of a trade or business in the United States, and

“(III) not exempt from taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

“(2) PREVENTION OF DOUBLE INCLUSION.—The Secretary shall prescribe such adjustment to the provisions of this section as may be necessary to prevent the same item of income of a qualified electing fund from being included in the gross income of a United States person more than once.”

(33) Paragraph (3) of section 1291(b) of the 1986 Code (as amended by paragraph (3)) is amended by striking out “and” at the end of subparagraph (E), by striking out the period at the

end of subparagraph (F) and inserting in lieu thereof “, and by adding at the end thereof the following new subparagraph:

“(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign investment company.”

(34) Paragraph (2) of section 1294(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: “To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized in whole or in part, and the transferee in such transaction shall succeed to the treatment under this section of the transferor.”

(35) Section 1297 of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) TREATMENT OF STOCK HELD BY POOLED INCOME FUND.—If stock in a passive foreign investment company is owned (or treated as owned under subsection (a)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

“(1) section 1291 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1291) a deduction would be allowable with respect to such gain under section 642(c)(3),

“(2) section 1293 shall not apply with respect to such stock, and

“(3) in determining whether section 1291 applies to any distribution in respect of such stock, subsection (d) of section 1291 shall not apply.”

(36) Paragraph (1) of section 1297(b) of the 1986 Code is amended by striking out “passive foreign investment corporation” and inserting in lieu thereof “passive foreign investment company”.

(37)(A) Paragraph (2) of section 1295(b) of the 1986 Code is amended by adding at the end thereof the following new sentence: “To the extent provided in regulations, such an election may be made later than as required by the preceding sentence in cases where the company failed to make a timely election because it reasonably believed it was not a passive foreign investment company.”

(B) The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of enactment of this Act.

(q) AMENDMENTS RELATED TO SECTION 1241 OF THE ACT.—

(1)(A) Subparagraph (B) of section 884(b)(2) of the 1986 Code is amended to read as follows:

“(B) LIMITATION.—

“(i) IN GENERAL.—The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits at the close of the preceding taxable year.

“(ii) ACCUMULATED EFFECTIVELY CONNECTED EARNINGS AND PROFITS.—For purposes of clause (i), the t

'accumulated effectively connected earnings and profits' means the excess of—

"(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over

"(II) the aggregate dividend equivalent amounts determined for such preceding taxable years."

(B) For purposes of applying section 884 of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under sections 1023(e)(3)(C) and 1021(e)(2)(C) of the Reform Act or arising from section 823(b)(4)(C) of the 1986 Code.

26 USC 884 note.

(2)(A) Paragraph (1) of section 884(e) of the 1986 Code is amended to read as follows:

"(1) **LIMITATION ON TREATY EXEMPTION.**—No treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

"(A) such treaty is an income tax treaty, and

"(B) such foreign corporation is a qualified resident of such foreign country."

(B) Paragraph (3) of section 884(e) of the 1986 Code is amended to read as follows:

"(3) **COORDINATION WITH WITHHOLDING TAX.**—

"(A) **IN GENERAL.**—If a foreign corporation is subject to the tax imposed by subsection (a) for any taxable year (determined after the application of any treaty), no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation out of its earnings and profits for such taxable year.

"(B) **LIMITATION ON CERTAIN TREATY BENEFITS.**—If—

"(i) any dividend described in section 861(a)(2)(B) is received by a foreign corporation, and

"(ii) subparagraph (A) does not apply to such dividend,

rules similar to the rules of subparagraphs (A) and (B) of subsection (f)(3) shall apply to such dividend."

(C) Subsection (f) of section 884 of the 1986 Code is amended—

(i) by striking out the 2nd sentence of paragraph (1), and

(ii) by adding at the end thereof the following new paragraph:

"(3) **COORDINATION WITH TREATIES.**—

"(A) **PAYOR MUST BE QUALIFIED RESIDENT.**—In the case of any interest described in paragraph (1) which is paid or accrued by a foreign corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

"(i) such treaty is an income tax treaty, and

"(ii) such foreign corporation is a qualified resident of such foreign country.

"(B) **RECIPIENT MUST BE QUALIFIED RESIDENT.**—In the case of any interest described in paragraph (1) which is received or accrued by any corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

"(i) such treaty is an income tax treaty, and

“(ii) such foreign corporation is a qualified resident of such foreign country.”

(3) Paragraph (1) of section 884(f) of the 1986 Code is amended—

(A) by striking out “sections 871, 881, 1441, and 1442” and inserting in lieu thereof “this subtitle”, and

(B) by adding at the end thereof the following new sentence:

“To the extent provided in regulations, subparagraph (A) shall not apply to interest in excess of the amounts reasonably expected to be deductible under section 882 in computing the effectively connected taxable income of such foreign corporation.”

(4) Paragraph (4) of section 884(e) of the 1986 Code is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

“(C) CORPORATIONS OWNED BY PUBLICLY TRADED DOMESTIC CORPORATIONS.—A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

“(i) such corporation is wholly owned (directly or indirectly) by a domestic corporation, and

“(ii) the stock of such domestic corporation is primarily and regularly traded on an established securities market in the United States.”

(5) Subparagraph (A) of section 884(e)(4) of the 1986 Code is amended—

(A) by striking out “more than 50 percent” in clause (i) and inserting in lieu thereof “50 percent or more”, and

(B) by striking out “or the United States” in clause (ii) and inserting in lieu thereof “or citizens or residents of the United States”.

(6) Subsection (e) of section 884 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) EXCEPTION FOR INTERNATIONAL ORGANIZATIONS.—This section shall not apply to an international organization (as defined in section 7701(a)(18)).”

(7) Subparagraph (B) of section 861(a)(2) of the 1986 Code is amended by striking out “other than under section 884(d)(2)” each place it appears and inserting in lieu thereof “other than income described in section 884(d)(2)”.

(8) Paragraph (2) of section 26(b) of the 1986 Code is amended by striking out “and” at the end of subparagraph (J), by striking out the period at the end of subparagraph (K) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new subparagraph:

“(L) section 884 (relating to branch profits tax).”

(9) Section 861 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(f) CROSS REFERENCE.—

“For treatment of interest paid by the branch of a foreign corporation, see section 884(f).”

(10) The paragraph (6) of section 906(b) of the 1986 Code which was added by section 1241(c) of the Reform Act is redesignated as paragraph (7).

(11) Subsection (c) of section 2104 of the 1986 Code is amended striking out "section 861(a)(1)(B), section 861(a)(1)(G), or section 861(a)(1)(H)" and inserting in lieu thereof "subparagraph (C), (D) of section 861(a)(1)".

(12) Subparagraph (A) of section 904(g)(9) of the 1986 Code is amended by striking out "861(a)(1)(B)" and inserting in lieu thereof "861(a)(1)(A)".

(13)(A) Paragraph (1) of section 4373 of the 1986 Code is amended to read as follows:

"(1) **EFFECTIVELY CONNECTED ITEMS.**—Any amount which is effectively connected with the conduct of a trade or business within the United States unless such amount is exempt from the application of section 882(a) pursuant to a treaty obligation with the United States."

(B) The amendment made by subparagraph (A) shall apply with respect to premiums paid after the date 30 days after the date of the enactment of this Act.

26 USC 4373
note.

(14) Paragraph (1) of section 884(f) of the 1986 Code is amended by inserting "(or having gross income treated as effectively connected with the conduct of a trade or business in the United States)" after "United States" in the material preceding subparagraph (A) thereof.

(15) Section 861(a)(2)(C) of the 1986 Code is amended by striking out "section 243(d)" and inserting in lieu thereof "section 863(e)".

AMENDMENTS RELATED TO SECTION 1242 OF THE REFORM ACT.—

(1) Paragraph (7) of section 864(c) of the 1986 Code is amended to read as follows:

"(7) **TREATMENT OF CERTAIN PROPERTY TRANSACTIONS.**—For purposes of this title, if—

"(A) any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and

"(B) such property is disposed of within 10 years after such cessation,

the determination of whether any income or gain attributable to such disposition is taxable under section 871(b) or 882 (as the case may be) shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account."

(2) Paragraph (6) of section 864(c) of the 1986 Code is amended to read as follows:

"(6) **TREATMENT OF CERTAIN DEFERRED PAYMENTS, ETC.**—For purposes of this title, in the case of any income or gain of a nonresident alien individual or a foreign corporation which—

"(A) is taken into account for any taxable year, but

"(B) is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,

the determination of whether such income or gain is taxable under section 871(b) or 882 (as the case may be) shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year referred to in subparagraph (A)."

(s) AMENDMENTS RELATED TO SECTION 1246 OF THE REFORM ACT.—
 (1)(A) Section 1446 of the 1986 Code is amended to read as follows:

“SEC. 1446. WITHHOLDING TAX ON FOREIGN PARTNERS’ SHARE OF EFFECTIVELY CONNECTED INCOME.

Regulations.

“(a) GENERAL RULE.—If—

“(1) a partnership has effectively connected taxable income for any taxable year, and

“(2) any portion of such income is allocable under section 704 to a foreign partner,
 such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe.

“(b) AMOUNT OF WITHHOLDING TAX.—

“(1) IN GENERAL.—The amount of the withholding tax payable by any partnership under subsection (a) shall be equal to the applicable percentage of the effectively connected taxable income of the partnership which is allocable under section 704 to foreign partners.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term ‘applicable percentage’ means—

“(A) the highest rate of tax specified in section 1 in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners who are not corporations, and

“(B) the highest rate of tax specified in section 11(b) in the case of the portion of the effectively connected taxable income which is allocable under section 704 to foreign partners which are corporations.

“(c) EFFECTIVELY CONNECTED TAXABLE INCOME.—For purposes of this section, the term ‘effectively connected taxable income’ means the taxable income of the partnership which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States computed with the following adjustments:

“(1) Paragraph (1) of section 703(a) shall not apply.

Petroleum and
 petroleum
 products.
 Natural gas.

“(2) The partnership shall be allowed a deduction for depletion with respect to oil and gas wells but the amount of such deduction shall be determined without regard to sections 613 and 613A.

“(3) There shall not be taken into account any item of income, gain, loss, or deduction to the extent allocable under section 704 to any partner who is not a foreign partner.

“(d) TREATMENT OF FOREIGN PARTNERS.—

“(1) ALLOWANCE OF CREDIT.—Each foreign partner of a partnership shall be allowed a credit under section 33 for such partner’s share of the withholding tax paid by the partnership under this section. Such credit shall be allowed for the partner’s taxable year in which (or with which) the partnership taxable year (for which such tax was paid) ends.

“(2) CREDIT TREATED AS DISTRIBUTED TO PARTNER.—A foreign partner’s share of any withholding tax paid by the partnership under this section shall be treated as distributed to such partner by such partnership on the last day of the partnership’s taxable year (for which such tax was paid).

“(e) **FOREIGN PARTNER.**—For purposes of this section, the term ‘foreign partner’ means any partner who is not a United States person.

“(f) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations providing for the application of this section in the case of publicly traded partnerships.”

(B) Paragraph (2) of section 6401(b) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following: “The preceding sentence shall not apply to any credit so allowed by reason of section 1446.”

(C) The table of sections for subchapter A of chapter 3 of the 1986 Code is amended by striking out the item relating to section 1446 and inserting in lieu thereof the following:

“Sec. 1446. Withholding of tax on foreign partners’ share of effectively connected income.”

(D) The amendments made by this paragraph shall apply to taxable years beginning after December 31, 1987. No amount shall be required to be deducted and withheld under section 1446 of the 1986 Code (as in effect before the amendment made by subparagraph (A)).

26 USC 1446
note.

(2)(A) Subsection (a) of section 872 of the 1986 Code is amended by striking out “the case of a nonresident alien individual” and inserting in lieu thereof “the case of a nonresident alien individual, except where the context clearly indicates otherwise”.

(B) Subsection (b) of section 882 of the 1986 Code is amended by striking out “the case of a foreign corporation” and inserting in lieu thereof “the case of a foreign corporation, except where the context clearly indicates otherwise”.

(t) **AMENDMENTS RELATED TO SECTION 1247 OF THE REFORM ACT.**—

(1) Subparagraph (A) of section 892(a)(2) of the 1986 Code is amended by striking out “or” at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof “, or”, and by adding at the end thereof the following new clause:

“(iii) derived from the disposition of any interest in a controlled commercial entity.”

(2) Clause (ii) of section 892(a)(2)(A) of the 1986 Code is amended to read as follows:

“(ii) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity.”

(3) Subsection (a) of section 892 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) **TREATMENT AS RESIDENT.**—For purposes of this title, a foreign government shall be treated as a corporate resident of its country. A foreign government shall be so treated for purposes of any income tax treaty obligation of the United States if such government grants equivalent treatment to the Government of the United States.”

(4) Section 893 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(c) **LIMITATION ON EXCLUSION.**—Subsection (a) shall not apply to—

“(1) any employee of a controlled commercial entity (as defined in section 892(a)(2)(B)), or

“(2) any employee of a foreign government whose services are primarily in connection with a commercial activity (whether within or outside the United States) of the foreign government.”

(u) AMENDMENT RELATED TO SECTION 1249 OF THE REFORM ACT.—Subsection (d) of section 1503 of the 1986 Code is amended by adding at the end thereof the following new paragraphs:

“(3) TREATMENT OF LOSSES OF SEPARATE BUSINESS UNITS.—To the extent provided in regulations, any loss of a separate unit of a domestic corporation shall be subject to the limitations of this subsection in the same manner as if such unit were a wholly owned subsidiary of such corporation.

Regulations.

“(4) INCOME ON ASSETS ACQUIRED AFTER THE LOSS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this subsection by contributing assets to the corporation with the dual consolidated loss after such loss was sustained.”

(v) AMENDMENTS RELATED TO SECTION 1261 OF THE REFORM ACT.—

(1)(A) So much of section 986 of the 1986 Code as precedes subsection (c) thereof is amended to read as follows:

“SEC. 986. DETERMINATION OF FOREIGN TAXES AND FOREIGN CORPORATION'S EARNINGS AND PROFITS.

“(a) FOREIGN TAXES.—

“(1) IN GENERAL.—For purposes of determining the amount of the foreign tax credit—

“(A) any foreign income taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

“(B) any adjustment to the amount of foreign income taxes shall be translated into dollars using—

“(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

“(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of original payment of such foreign income taxes.

“(2) FOREIGN INCOME TAXES.—For purposes of paragraph (1), ‘foreign income taxes’ means any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States.

“(b) EARNINGS AND PROFITS AND DISTRIBUTIONS.—For purposes of determining the tax under this subtitle—

“(1) of any shareholder of any foreign corporation, the earnings and profits of such corporation shall be determined in the corporation's functional currency, and

“(2) in the case of any United States person, the earnings and profits determined under paragraph (1) (when distributed, deemed distributed, or otherwise taken into account under this subtitle) shall (if necessary) be translated into dollars using the appropriate exchange rate.”

(B) Section 987 of the 1986 Code is amended by inserting “and” at the end of paragraph (2), by striking out “, and” at the end of paragraph (3) and inserting in lieu thereof a period, and by striking out paragraph (4).

(C) The table of sections for subpart J of part III of subchapter N of chapter 1 is amended by striking out the item relating to section 986 and inserting in lieu thereof the following:

"Sec. 986. Determination of foreign taxes and foreign corporation's earnings and profits."

(2)(A) Subsection (c) of section 988 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULES WHERE TAXPAYER TAKES OR MAKES DELIVERY.—If the taxpayer takes or makes delivery in connection with any section 988 transaction described in paragraph (1)(B)(iii), any gain or loss (determined as if the taxpayer sold the contract, option, or instrument on the date on which he took or made delivery for its fair market value on such date) shall be recognized in the same manner as if such contract, option, or instrument were so sold."

(B) The amendment made by subparagraph (A) shall not apply in any case in which the taxpayer takes or makes delivery before June 11, 1987.

26 USC 988 note.

(3)(A) Subsection (b) of section 988 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR CERTAIN CONTRACTS, ETC.—In the case of any section 988 transaction described in subsection (c)(1)(B)(iii), any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be)."

(B) Subclause (II) of section 988(c)(1)(C)(i) of the 1986 Code is amended to read as follows:

"(II) any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be)."

(C) Paragraph (2) of section 988(c) of the 1986 Code is amended by inserting "or" at the end of subparagraph (A), by striking out ", or" at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C).

(D) Paragraph (3) of section 988(c) of the 1986 Code is amended to read as follows:

"(3) PAYMENT DATE.—The term 'payment date' means the date on which the payment is made or received."

(4) The first sentence of paragraph (1) of section 988(d) is amended by striking out "this section" and inserting in lieu thereof "this subtitle".

(5) Subsection (b) of section 989 of the 1986 Code is amended—

(A) by striking out "951(a)" in paragraph (3) and inserting in lieu thereof "951(a)(1)(A)", and

(B) by adding at the end thereof the following new sentence:

"For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included."

(6) Clause (iii) of section 988(c)(1)(B) of the 1986 Code is amended to read as follows:

"(iii) Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument unless such instrument would be marked to

Contracts.

market under section 1256 if held on the last day of the taxable year."

(7) Subparagraph (B) of section 988(a)(3) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(iii) SPECIAL RULE FOR PARTNERSHIPS.—To the extent provided in regulations, in the case of a partnership, the determination of residence shall be made at the partner level."

(8) Clause (i) of section 988(a)(3)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: "If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien."

(9) Section 903 of the 1986 Code is amended by striking out "this subpart" and inserting in lieu thereof "this part".

(w) AMENDMENTS RELATED TO SECTION 1274 OF THE REFORM ACT.—

(1) Subsection (e) of section 932 of the 1986 Code is amended to read as follows:

"(e) SPECIAL RULE FOR APPLYING SECTION TO TAX IMPOSED IN VIRGIN ISLANDS.—In applying this section for purposes of determining income tax liability incurred to the Virgin Islands, the provisions of this section shall not be affected by the provisions of Federal law referred to in section 934(a)."

(2) Paragraph (4) of section 932(c) of the 1986 Code is amended to read as follows:

"(4) RESIDENTS OF THE VIRGIN ISLANDS.—In the case of an individual—

"(A) who is a bona fide resident of the Virgin Islands at the close of the taxable year,

"(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, and

"(C) who fully pays his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income, for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account."

(3) Paragraph (2) of section 932(c) of the 1986 Code is amended by striking out "his income tax return" and inserting in lieu thereof "an income tax return".

(4) Subsection (c) of section 1274 of the Reform Act is amended by striking out "this title" and inserting in lieu thereof "the Internal Revenue Code of 1986".

(x) AMENDMENT RELATED TO SECTION 1275 OF THE REFORM ACT.—Section 1444 of the 1986 Code is amended by striking out "(as modified by section 934A)".

(y) AMENDMENT RELATED TO SECTION 1276 OF THE REFORM ACT.—Subsection (a) of section 7654 of the 1986 Code is amended by striking out "an individual to which" and inserting in lieu thereof "an individual to whom".

(z) AMENDMENT RELATED TO SECTION 1277 OF THE REFORM ACT.—

(1) Section 1277 of the Reform Act is amended by adding at the end thereof the following new subsection:

26 USC 932 note.

26 USC 931 note.

“(f) EXEMPTION FROM WITHHOLDING.—Notwithstanding subsection (b), the modification of section 884 of the Internal Revenue Code of 1986 by reason of the amendment to section 881 of such Code by section 1273(b)(1) of this Act shall apply to taxable years beginning after December 31, 1986.”

(2) Subsection (e) of section 1277 of the Reform Act is amended by striking out “The preceding sentence” and inserting in lieu thereof “Notwithstanding subsection (b), the preceding sentence”.

(aa) COORDINATION WITH TREATIES.—

(1) TREATY OBLIGATIONS.—

(A) Subsection (d) of section 7852 of the 1986 Code is amended to read as follows:

“(d) TREATY OBLIGATIONS.—

“(1) IN GENERAL.—For purposes of determining the relationship between a provision of a treaty and any law of the United States affecting revenue, neither the treaty nor the law shall have preferential status by reason of its being a treaty or law.

“(2) SAVINGS CLAUSE FOR 1954 TREATIES.—No provision of this title (as in effect without regard to any amendment thereto enacted after August 16, 1954) shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 16, 1954.”

(B) Section 7852(d)(1) of the 1986 Code, as added by subparagraph (A), shall apply to any taxable period with respect to which the time for assessment of any deficiency has not expired by reason of any law or rule of law before the date of the enactment of this Act.

26 USC 7852
note.

(2) CERTAIN AMENDMENTS TO APPLY NOTWITHSTANDING TREATIES.—The following amendments made by the Reform Act shall apply notwithstanding any treaty obligation of the United States in effect on the date of the enactment of the Reform Act:

26 USC 861 note.

(A) The amendments made by section 1201 of the Reform Act.

(B) The amendments made by title VII of the Reform Act to the extent such amendments relate to the alternative minimum tax foreign tax credit.

(3) CERTAIN AMENDMENTS NOT TO APPLY TO THE EXTENT INCONSISTENT WITH TREATIES.—The following amendments made by the Reform Act shall not apply to the extent the application of such amendments would be contrary to any treaty obligation of the United States in effect on the date of the enactment of the Reform Act:

26 USC 861 note.

(A) The amendments made by section 1211 of the Reform Act to the extent—

(i) such amendments apply in the case of an individual treated as a resident of a foreign country under a treaty obligation of the United States as so in effect, or

(ii) such amendments relate to income of a non-resident from the sale or exchange of inventory property which would otherwise be sourced under section 865(e)(2) of the 1986 Code.

(B) The amendments made by section 1212(a) of the Reform Act; except for purposes of determining the amount of the foreign tax credit.

(C) The amendments made by subsections (b) and (c) of section 1212 of the Reform Act.

(D) The amendments made by section 1214 of the Reform Act; except for purposes of determining the amount of the foreign tax credit.

(E) The amendment made by section 1241(a) of the Reform Act to the extent that, under a treaty obligation of the United States, interest described in section 884(f)(1)(A) of the 1986 Code (as added by such amendment) which is in excess of amounts deducted would be treated as other than United States source.

(F) The amendment made by section 1241(b)(2)(A) of the Reform Act.

(G) The amendment made by section 1241(a) of the Reform Act to the extent such amendment relates to section 884(f)(1)(B) of the 1986 Code.

(H) The amendments made by section 1242 of the Reform Act to the extent they relate to paragraph (7) of section 864(c) of the 1986 Code.

(I) The amendment made by section 1247(a) of the Reform Act.

(J) The amendments made by section 123 of the Reform Act.

26 USC 861 note.

(4) **TREATMENT OF TECHNICAL CORRECTIONS.**—For purposes of paragraphs (2) and (3), any amendment made by this title shall be treated as if it had been included in the provision of the Reform Act to which such amendment relates.

(5) **REPORTING OF CERTAIN TREATY-BASED RETURN POSITIONS.**—

(A) Subchapter B of chapter 61 of the 1986 Code is amended by redesignating section 6114 as section 6115 and by inserting after section 6113 the following new section:

“SEC. 6114. TREATY-BASED RETURN POSITIONS.

“(a) **IN GENERAL.**—Each taxpayer who, with respect to any tax imposed by this title, takes the position that a treaty of the United States overrules (or otherwise modifies) an internal revenue law of the United States shall disclose (in such manner as the Secretary may prescribe) such position—

“(1) on the return of tax for such tax (or any statement attached to such return), or

“(2) if no return of tax is required to be filed, in such form as the Secretary may prescribe.

“(b) **WAIVER AUTHORITY.**—The Secretary may by regulations waive the requirements of subsection (a) with respect to classes of cases for which the Secretary determines that the waiver will not impede the assessment and collection of tax.”

(B) Part I of subchapter B of chapter 68 of the 1986 Code is amended by adding at the end thereof the following new section:

“SEC. 6712. FAILURE TO DISCLOSE TREATY-BASED RETURN POSITIONS.

“(a) **GENERAL RULE.**—If a taxpayer fails to meet the requirements of section 6114, there is hereby imposed a penalty equal to \$1,000 (\$10,000 in the case of a C corporation) on each such failure.

“(b) **AUTHORITY TO WAIVE.**—The Secretary may waive all or any part of the penalty provided by this section on a showing by the taxpayer that there was reasonable cause for the failure and that the taxpayer acted in good faith.

Law
enforcement and
crime.

“(c) **PENALTY IN ADDITION TO OTHER PENALTIES.**—The penalty imposed by this section shall be in addition to any other penalty imposed by law.”

(C)(i) The table of sections for subchapter B of chapter 61 of the 1986 Code is amended by striking out the item relating to section 6114 and inserting in lieu thereof the following:

“Sec. 6114. Treaty-based return positions.

“Sec. 6115. Cross reference.”

(ii) The table of sections for part I of subchapter B of chapter 68 of the 1986 Code is amended by adding at the end thereof the following new item:

“Sec. 6712. Failure to disclose treaty-based return positions.”

(D) The amendments made by this paragraph shall apply to taxable periods the due date for filing returns for which (without extension) occurs after December 31, 1988.

26 USC 6114
note.

(6) Subsection (a) of section 894 of the 1986 Code is amended to read as follows:

“(a) **TREATY PROVISIONS.**—

“(1) **IN GENERAL.**—The provisions of this title shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

“(2) **CROSS REFERENCE.**—

“For relationship between treaties and this title, see section 7852(d).”

(bb) **MISCELLANEOUS FOREIGN TECHNICAL CORRECTIONS.**—

(1) **PROVISIONS RELATING TO FOREIGN PERSONAL HOLDING COMPANIES.**—

(A) Subsection (f) of section 551 of the 1986 Code is amended—

(i) by amending paragraph (1) to read as follows:

“(1) a foreign partnership or an estate or trust which is a foreign estate or trust, or”, and

(ii) by striking out the last sentence and inserting in lieu thereof the following: “In any case to which the preceding sentence applies, the Secretary may by regulations provide that rules similar to the rules of section 1297(b)(5) shall apply, and provide for such other adjustments in the application of this subchapter as may be necessary to carry out the purposes of this subsection.”

(B) Subsection (a) of section 551 of the 1986 Code is amended by striking out “(other than estates or trusts the gross income of which under this subtitle includes only income from sources within the United States)” and inserting in lieu thereof “(other than foreign estates or trusts)”.

(C) Subsection (c) of section 552 of the 1986 Code is amended to read as follows:

“(c) **LOOK-THRU FOR CERTAIN DIVIDENDS AND INTEREST.**—

“(1) **IN GENERAL.**—For purposes of this part, any related person dividend or interest shall be treated as foreign personal holding company income only to the extent such dividend or interest is attributable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which would be foreign personal holding company income.

"(2) RELATED PERSON DIVIDEND OR INTEREST.—For purposes of paragraph (1), the term 'related person dividend or interest' means any dividend or interest which—

"(A) is described in subparagraph (A) of section 954(c)(3), and

"(B) is received from a related person which is not a foreign personal holding company (determined without regard to this subsection).

For purposes of the preceding sentence, the term 'related person' has the meaning given such term by section 954(d)(3) (determined by substituting 'foreign personal holding company' for 'controlled foreign corporation' each place it appears)."

(D) The amendments made by this paragraph shall apply to taxable years of foreign corporations beginning after December 31, 1986.

(2) TREATMENT OF CERTAIN PAYMENTS OUTSIDE THE UNITED STATES.—

(A) Subparagraph (A) of section 3405(d)(13) of the 1986 Code is amended by striking out "the United States" and inserting in lieu thereof "the United States and any possession of the United States".

(B) Clause (i) of section 3405(d)(13)(B) of the 1986 Code is amended to read as follows:

"(i) a United States citizen or a resident alien of the United States, or".

(C) The heading of paragraph (13) of section 3405(d) of the 1986 Code is amended by striking out "UNITED STATES" and inserting in lieu thereof "UNITED STATES OR ITS POSSESSIONS".

(D) The amendments made by this paragraph shall apply to distributions made after the date of the enactment of this Act.

(3) CLARIFICATION OF DISCLOSURE UNDER CERTAIN AGREEMENTS.—

(A) Paragraph (4) of section 6103(k) of the 1986 Code is amended—

(i) by striking out "or other convention" and inserting in lieu thereof "or other convention or bilateral agreement", and

(ii) by striking out "such convention" and inserting in lieu thereof "such convention or bilateral agreement".

(B) Subparagraph (A) of section 6103(b)(5) of the 1986 Code is amended by striking out "the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau" and inserting in lieu thereof "and the Commonwealth of the Northern Mariana Islands".

(C) The amendments made by this paragraph shall take effect on the date of the enactment of the Tax Reform Act of 1986.

(4) COORDINATION OF TREATIES WITH SECTION 904 (g).—

(A) Subsection (g) of section 904 of the 1986 Code is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

"(10) COORDINATION WITH TREATIES.—

26 USC 551 note.

26 USC 3405
note.

Effective date.
26 USC 6103
note.

“(A) IN GENERAL.—If—

“(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

“(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

“(iii) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to such amount to the extent so attributable).

“(B) SPECIAL RULE.—Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection).”

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendment made by section 121 of the Tax Reform Act of 1984.

Effective date.
26 USC 904 note.

(5) TREATMENT OF ELECTION UNDER SECTION 338.—

(A) IN GENERAL.—Subsection (h) of section 338 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(16) COORDINATION WITH FOREIGN TAX CREDIT PROVISIONS.—Except as provided in regulations, this section shall not apply for purposes of determining the source or character of any item for purposes of subpart A of part III of subchapter N of this chapter (relating to foreign tax credit). The preceding sentence shall not apply to any gain to the extent such gain is includible in gross income as a dividend under section 1248 (determined without regard to any deemed sale under this section by a foreign corporation).”

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to qualified stock purchases (as defined in section 338(d)(3) of the 1986 Code) after March 31, 1988, except that, in the case of an election under section 338(h)(10) of the 1986 Code, such amendment shall apply to qualified stock purchases (as so defined) after June 10, 1987.

26 USC 338 note.

(6) TREATMENT OF TAX-EXEMPT SHAREHOLDERS OF A DISC.—

(A) Section 995 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(g) TREATMENT OF TAX-EXEMPT SHAREHOLDERS.—If any organization described in subsection (a)(2) or (b)(2) of section 511 is a shareholder in a DISC—

“(1) any amount deemed distributed to such shareholder under subsection (b),

“(2) any actual distribution to such shareholder which under section 996 is treated as out of accumulated DISC income, and

“(3) any gain which is treated as a dividend under subsection (c),

shall be treated as derived from the conduct of an unrelated trade or business (and the modifications of section 512(b) shall not apply). The rules of the preceding sentence shall apply also for purposes of determining any such shareholder's DISC-related deferred tax liability under subsection (f).”

26 USC 995 note.

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1987.

(7) TREATMENT OF CERTAIN AMOUNTS PREVIOUSLY TAXED UNDER SECTION 1248.—

(A) **IN GENERAL.**—Subsection (e) of section 959 of the 1986 Code is amended by striking out “such person under” and inserting in lieu thereof “such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under”.

26 USC 959 note.

(B) **EFFECTIVE DATE.**—The amendment made by subparagraph (A) shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986.

(8) TREATMENT OF SHARED FSC's.—

(A) **IN GENERAL.**—Section 927 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(g) TREATMENT OF SHARED FSC's.—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), each separate account referred to in paragraph (3) maintained by a shared FSC shall be treated as a separate corporation for purposes of this subpart.

“(2) **CERTAIN REQUIREMENTS APPLIED AT SHARED FSC LEVEL.**—Paragraph (1) shall not apply—

“(A) for purposes of—

“(i) subparagraphs (A), (B), (D), and (E) of section 922(a)(1),

“(ii) paragraph (2) of section 922(a),

“(iii) subsections (b), (c), and (e) of section 924, and

“(iv) subsection (f) of this section, and

“(B) for such other purposes as the Secretary may by regulations prescribe.

“(3) **SHARED FSC.**—For purposes of this subsection, the term ‘shared FSC’ means any corporation if—

“(A) such corporation maintains a separate account for transactions with each shareholder (and persons related to such shareholder),

“(B) distributions to each shareholder are based on the amounts in the separate account maintained with respect to such shareholder, and

“(C) such corporation meets such other requirements as the Secretary may by regulations prescribe.”

26 USC 927 note.

(B) The amendment made by subparagraph (A) shall apply as if included in the provision of the Tax Reform Act of 1984 to which it relates.

(9) CLARIFICATION OF DIVIDENDS RECEIVED DEDUCTION FOR DIVIDENDS FROM A FSC.—

(A) Subsection (c) of section 245 of the 1986 Code is amended to read as follows:

“(c) CERTAIN DIVIDENDS RECEIVED FROM FSC.—

“(1) **IN GENERAL.**—In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to—

“(A) 100 percent of any dividend received from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC, and

“(B) 70 percent (80 percent in the case of dividends from a 20-percent owned corporation as defined in section 243(c)(2)) of any dividend received from another corporation which is distributed out of earnings and profits attributable to effectively connected income received or accrued by such other corporation while such other corporation was a FSC.

“(2) **EXCEPTION FOR CERTAIN DIVIDENDS.**—Paragraph (1) shall not apply to any dividend which is distributed out of earnings and profits attributable to foreign trade income which—

“(A) is section 923(a)(2) nonexempt income (within the meaning of section 927(d)(6)), or

“(B) would not, but for section 923(a)(4), be treated as exempt foreign trade income.

“(3) **NO DEDUCTION UNDER SUBSECTION (a) OR (b).**—No deduction shall be allowable under subsection (a) or (b) with respect to any dividend which is distributed out of earnings and profits of a corporation accumulated while such corporation was a FSC.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) **FOREIGN TRADE INCOME; EXEMPT FOREIGN TRADE INCOME.**—The terms ‘foreign trade income’ and ‘exempt foreign trade income’ have the respective meanings given such terms by section 923.

“(B) **EFFECTIVELY CONNECTED INCOME.**—The term ‘effectively connected income’ means any income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States and is subject to tax under this chapter. Such term shall not include any foreign trade income.”

(B) The amendment made by subparagraph (A) shall apply as if included in the provision of the Tax Reform Act of 1984 to which it relates.

26 USC 245 note.

SEC. 1013. AMENDMENTS RELATED TO TITLE XIII OF THE REFORM ACT.**(a) AMENDMENTS RELATED TO SECTION 1301 OF THE REFORM ACT.—**

(1) Clause (iii) of section 142(d)(4)(B) of the 1986 Code is amended by striking out “average rent” and inserting in lieu thereof “average gross rent”.

(2) Clause (iii) of section 143(a)(2)(A) of the 1986 Code is amended by striking out “no bond which is part of such issue meets” and inserting in lieu thereof “such issue does not meet”.

(3) Paragraph (4) of section 143(b) of the 1986 Code is amended by inserting “is part of an issue which” after “which”.

(4)(A) Clause (ii) of section 144(a)(12)(A) of the 1986 Code is amended by inserting “(or series of bonds)” before “issued to refund”.

(B)(i) Subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code is amended to read as follows:

“(I) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue.”.

(ii) Subparagraph (A) of section 144(a)(12) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“For purposes of clause (ii)(I), average maturity shall be determined in accordance with section 147(b)(2)(A).”

26 USC 144 note.

(iii) A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code if such bond met the requirement of such subclause as in effect before the amendments made by this subparagraph.

(C) Clause (ii) of section 144(a)(12)(A) of the 1986 Code is amended by adding “and” at the end of subclause (II), by striking out subclause (III), and by redesignating subclause (IV) as subclause (III).

Loans.

(5) Subparagraph (B) of section 144(b)(1) of the 1986 Code is amended—

(A) by striking out “to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply”, and

(B) by striking out “of such Act” and inserting in lieu thereof “of the Higher Education Act of 1965”, and

(C) by striking out “eligible” and all that follows in such subparagraph and inserting in lieu thereof the following: “eligible. A program shall not be treated as described in this subparagraph if such program is described in subparagraph (A).”

A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a)).”

(6) Subclause (I) of section 145(b)(2)(B)(ii) of the 1986 Code is amended by striking out “103(b)” and inserting in lieu thereof “103(b)(2)”.

(7) Clause (i) of section 145(b)(2)(C) of the 1986 Code is amended by striking out “subparagraph (B)(ii)” and inserting in lieu thereof “subparagraph (B)”.

(8) Paragraph (4) of section 145(b) of the 1986 Code is amended by striking out “subparagraphs (C) and (D)” and inserting in lieu thereof “subparagraphs (C), (D), and (E)”.

(9) Subparagraph (A) of section 146(f)(5) of the 1986 Code (as in effect before the amendments made by section 10631 of the Revenue Act of 1987) is amended to read as follows:

“(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),”.

(10)(A) Paragraph (1) of section 146(k) of the 1986 Code is amended by striking out “paragraph (2)” and inserting in lieu thereof “paragraphs (2) and (3)”.

(B) Subsection (k) of section 146 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) TREATMENT OF GOVERNMENTAL BONDS TO WHICH VOLUME CAP ALLOCATED.—Paragraph (1) shall not apply to any bond to which volume cap is allocated under section 141(b)(5)—

“(A) for an output facility, or

“(B) for a facility of a type described in paragraph (4), (5), (6), or (10) of section 142(a),

if the issuer establishes that the State's share of the private business use (as defined by section 141(b)(6)) of the facility will equal or exceed the State's share of the volume cap allocated with respect to bonds issued to finance the facility.”

(11) Subsection (e) of section 147 of the 1986 Code is amended by striking out “treated as”.

(12) Subsection (f) of section 147 of the 1986 Code (relating to public approval requirement for private activity bonds) is amended by adding at the end thereof the following new paragraph:

“(4) SPECIAL RULES FOR SCHOLARSHIP FUNDING BOND ISSUES AND VOLUNTEER FIRE DEPARTMENT BOND ISSUES.—

“(A) SCHOLARSHIP FUNDING BONDS.—In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued. Where more than one governmental unit within a State has made a request described in section 150(d)(2)(B), the State may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.

“(B) VOLUNTEER FIRE DEPARTMENT BONDS.—In the case of a bond of a volunteer fire department which meets the requirements of section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued.”

(13)(A) Paragraph (1) of section 147(g) of the 1986 Code (relating to restriction on issuance costs financed by issue) is amended by striking out “aggregate face amount of the issue” and inserting in lieu thereof “proceeds of the issue”.

(B) Paragraph (2) of section 147(g) of the 1986 Code is amended by striking out “aggregate authorized face amount of the issue does not” and inserting in lieu thereof “proceeds of the issue do not”.

(C) The amendments made by this paragraph shall apply to bonds issued after June 30, 1987.

(14) Paragraph (2) of section 148(d) of the 1986 Code (relating to special rules for reasonably required reserve or replacement fund) is amended by striking out “any fund described in paragraph (1)” and inserting in lieu thereof “any reserve or replacement fund”.

(15) Paragraph (3) of section 148(f) of the 1986 Code is amended by adding at the end thereof the following new sentence: “A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be

26 USC 147 note.

treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond."

(16)(A) Subclause (I) of section 148(f)(4)(B)(iii) of the 1986 Code (relating to safe harbor for determining when proceeds of tax or revenue anticipation bonds are expended) is amended by striking out "aggregate face amount of such issue" and inserting in lieu thereof "proceeds of such issue".

26 USC 148 note.

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 30, 1987.

(17)(A) Subparagraph (C) of section 148(f)(4) of the 1986 Code is amended—

(i) by striking out the heading and inserting in lieu thereof:

"(C) EXCEPTION FOR GOVERNMENTAL UNITS ISSUING \$5,000,000 OR LESS OF BONDS.—

"(i) IN GENERAL.—",

(ii) by redesignating clauses (i) through (iv) as subclauses (I) through (IV), respectively, and moving the margins of such subclauses 2 ems to the right, and

(iii) by striking out the last sentence and inserting in lieu thereof the following new clauses:

"(ii) AGGREGATION OF ISSUERS.—For purposes of subclause (IV) of clause (i)—

"(I) an issuer and all entities which issue bonds on behalf of such issuer shall be treated as 1 issuer,

"(II) all bonds issued by a subordinate entity shall, for purposes of applying such subclause to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

"(III) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of such subclause (IV) and all other entities benefiting thereby shall be treated as 1 issuer.

"(iii) CERTAIN REFUNDING BONDS NOT TAKEN INTO ACCOUNT IN DETERMINING SMALL ISSUER STATUS.—There shall not be taken into account under subclause (IV) of clause (i) any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

"(iv) CERTAIN ISSUES ISSUED BY SUBORDINATE GOVERNMENTAL UNITS, ETC., EXEMPT FROM REBATE REQUIREMENT.—An issue issued by a subordinate entity of a governmental unit with general taxing powers shall be treated as described in clause (i)(I) if the aggregate face amount of such issue does not exceed the lesser of—

"(I) \$5,000,000, or

"(II) the amount which, when added to the aggregate face amount of other issues issued by such entity, does not exceed the portion of the \$5,000,000 limitation under clause (i)(IV) which such governmental unit allocates to such entity.

For purposes of the preceding sentence, an entity which issues bonds on behalf of a governmental unit with general taxing powers shall be treated as a

subordinate entity of such unit. An allocation shall be taken into account under subclause (II) only if it is irrevocable and made before the issuance date of such issue and only to the extent that the limitation so allocated bears a reasonable relationship to the benefits received by such governmental unit from issues issued by such entity.

“(v) DETERMINATION OF WHETHER REFUNDING BONDS ELIGIBLE FOR EXCEPTION FROM REBATE REQUIREMENT.—If any portion of an issue is issued to refund other bonds, such portion shall be treated as a separate issue which does not meet the requirements of paragraphs (2) and (3) by reason of this subparagraph unless—

“(I) the aggregate face amount of such issue does not exceed \$5,000,000,

“(II) each refunded bond was issued as part of an issue which was treated as meeting the requirements of paragraphs (2) and (3) by reason of this subparagraph,

“(III) the average maturity date of the refunding bonds issued as part of such issue is not later than the average maturity date of the bonds to be refunded by such issue, and

“(IV) no refunding bond has a maturity date which is later than the date which is 30 years after the date the original bond was issued.

Subclause (III) shall not apply if the average maturity of the issue of which the original bond was a part (and of the issue of which the bonds to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

“(vi) REFUNDINGS OF BONDS ISSUED UNDER LAW PRIOR TO TAX REFORM ACT OF 1986.—If section 141(a) did not apply to any refunded bond, the issue of which such refunded bond was a part shall be treated as meeting the requirements of subclause (II) of clause (v) if—

“(I) such issue was issued by a governmental unit with general taxing powers,

“(II) no bond issued as part of such issue was an industrial development bond (as defined in section 103(b)(2), but without regard to subparagraph (B) of section 103(b)(3)) or a private loan bond (as defined in section 103(o)(2)(A), but without regard to any exception from such definition other than section 103(o)(2)(C)), and

“(III) the aggregate face amount of all tax-exempt bonds (other than bonds described in subclause (II)) issued by such unit during the calendar year in which such issue was issued did not exceed \$5,000,000.

References in subclause (II) to section 103 shall be to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986. Rules similar to the rules of clauses (ii) and (iii) shall apply for purposes of subclause (III). For purposes of subclause (II) of clause (i), bonds described in subclause

(II) of this clause to which section 141(a) does not apply shall not be treated as private activity bonds."

(B) Subclause (IV) of section 148(f)(4)(C)(i) of the 1986 Code (as redesignated by subparagraph (A)) is amended by striking out "(and all subordinate entities thereof)".

26 USC 148 note.

(C)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to bonds issued after June 30, 1987.

(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the amendments made by this paragraph shall apply to such issuer as if included in the amendments made by section 1301(a) of the Tax Reform Act of 1986.

(18) Clause (i) of section 148(f)(4)(D) of the 1986 Code is amended—

(A) by inserting "for a program" before "described in section 144(b)(1)(A)",

(B) by striking out "such a program" and inserting in lieu thereof "such program", and

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(C) by adding at the end thereof the following: "Amounts designated as interest on student loans shall not be taken into account in determining whether the issuer is reimbursed for such costs. Except as otherwise hereafter provided in regulations prescribed by the Secretary, costs described in subclause (I) paid from amounts earned as described in the first sentence of this clause may also be taken into account in determining the yield on the student loans under a program described in section 144(b)(1)(A)."

(19) Subparagraph (B) of section 148(f)(7) of the 1986 Code is amended by striking out "due to reasonable cause and not" and inserting in lieu thereof "not due".

(20) Clause (iii) of section 149(b)(3)(A) of the 1986 Code is amended by striking out "with respect to any bond issued before July 1, 1989".

(21) Subparagraph (A) of section 149(b)(4) of the 1986 Code is amended by striking out "a qualified student loan bond, and a qualified redevelopment bond" and inserting in lieu thereof "and a qualified student loan bond".

(22) Paragraph (3) of section 149(e) of the 1986 Code (relating to information reporting) is amended by striking out "there is reasonable cause for the failure to file such statement in a timely fashion" and inserting in lieu thereof "the failure to file in a timely fashion is not due to willful neglect".

(23)(A) Subparagraph (B) of section 150(b)(4) of the 1986 Code (relating to change in use of facilities financed with tax-exempt private activity bonds) is amended by inserting before the period "or a qualified small issue bond".

(B) The heading for paragraph (4) of section 150(b) of the 1986 Code is amended by inserting "AND SMALL ISSUE BONDS" after "EXEMPT FACILITY BONDS".

(C) Subparagraph (A) of section 150(b)(1) of the 1986 Code is amended by inserting "tax-exempt" before "qualified mortgage bond".

(24)(A) Subsection (e) of section 150 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT AS PRIVATE ACTIVITY BONDS ONLY FOR CERTAIN PURPOSES.—Bonds which are part of an issue which meets the

requirements of paragraph (1) shall not be treated as private activity bonds except for purposes of sections 147(f) and 149(d)."

(B) The amendment made by subparagraph (A) shall apply to bonds issued after October 21, 1988. 26 USC 150 note.

(25) Clause (ii) of section 1301(f)(2)(C) of the Reform Act is amended to read as follows: 26 USC 25.

"(ii) Clause (ii) of section 25(c)(2)(A) is amended by striking out all that follows 'an amount of' and inserting in lieu thereof 'private activity bonds which it may otherwise issue during such calendar year under section 146,'"

(26) Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages) is amended by striking out "1987" and inserting in lieu thereof "1988".

(27) The date contained in section 143(a)(1)(B) of the 1986 Code shall be treated as contained in section 103A(c)(1)(B) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, for purposes of any bond issued to refund a bond to which such 103A(c)(1) applies. 26 USC 143 note.

(28)(A) Subparagraph (A) of section 146(i)(2) of the 1986 Code is amended to read as follows:

"(A) the average maturity date of the qualified student loan bonds to be refunded by the issue of which the refunding bond is a part, or"

(B) Subparagraph (A) of section 146(i)(3) of the 1986 Code is amended to read as follows:

"(A) the average maturity date of the qualified mortgage bonds to be refunded by the issue of which the refunding bond is a part, or"

(C) Subsection (i) of section 146 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) AVERAGE MATURITY.—For purposes of paragraphs (2) and (3), average maturity shall be determined in accordance with section 147(b)(2)(A)."

(29) Subparagraph (D) of section 147(f)(2) of the 1986 Code is amended by striking out "the maturity date" and all that follows and inserting in lieu thereof "the average maturity date of the issue of which the refunding bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A)."

(30) Subparagraph (A) of section 150(b)(1) of the 1986 Code is amended by inserting before the period "and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing"

(31) Subparagraph (A) of section 150(b)(2) of the 1986 Code is amended by striking out "described paragraph" and inserting in lieu thereof "described in paragraph"

(32) Paragraph (2) of section 150(b) of the 1986 Code is amended by adding at the end thereof the following: "If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond."

(33) Subsection (b) of section 150 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) SMALL ISSUE BONDS WHICH EXCEED CAPITAL EXPENDITURE LIMITATION.—In the case of any financing provided from the

proceeds of any bond which, when issued, purported to be a qualified small issue bond, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period such bond is not a qualified small issue bond."

(34)(A) Paragraph (7) of section 103(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) is amended by striking out "necessary" and inserting in lieu thereof "necessary".

26 USC 103 note.

(B) Subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which Treasury regulation section 1.103-13 (1979) was provided to apply.

26 USC 103 note.

(35) VALIDATION OF SINKING FUND REGULATIONS.—

(A) Treasury Regulation section 1.103-13(g) (1979) is hereby enacted into positive law.

(B)(i) Except as provided in clause (ii), subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which such regulation was provided to apply.

(ii) Treasury Regulation section 1.103-13(g) (1979) as enacted into positive law by subparagraph (A) shall cease to apply to the extent hereafter modified by the Secretary of the Treasury or his delegate by regulations.

(36) Clause (i) of section 147(f)(2)(E) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"If the office of any elected official described in subclause (II) is vacated and an individual is appointed by the chief elected executive officer of the governmental unit and confirmed by the elected legislative body of such unit (if any) to serve the remaining term of the elected official, the individual so appointed shall be treated as the elected official for such remaining term."

(37) The table of sections for part III of subchapter B of chapter 1 of the 1986 Code is amended by striking out the items relating to sections 103 and 103A and inserting in lieu thereof the following new item:

"Sec. 103. Interest on State and local bonds."

(38) Subparagraph (B) of section 141(b)(5) of the 1986 Code is amended by striking out "which would cause bond" and inserting in lieu thereof "which would cause a bond".

(39) Clause (ii) of section 142(b)(1)(B) of the 1986 Code is amended by striking out "(as defined in 168(i)(3))" and inserting in lieu thereof "(as defined in section 168(i)(3))".

(40) Subparagraph (B) of section 146(d)(4) of the 1986 Code is amended by striking out "with respect a possession" and inserting in lieu thereof "with respect to a possession".

(41) Clause (ii) of section 48(l)(1)(A) of the 1986 Code is amended by striking out "an industrial development bond (within the meaning of section 103(b)(2))" and inserting in lieu thereof "a private activity bond (within the meaning of section 141)".

(42) Subsection (a) of section 7478 of the 1986 Code is amended—

(A) by striking out "whether prospective obligations are described in section 103(a)" in paragraph (1) and inserting

in lieu thereof “whether interest on prospective obligations will be excludable from gross income under section 103(a)”, and

(B) by striking out “whether such prospective obligations are described in section 103(a)” and inserting in lieu thereof “whether interest on such prospective obligations will be excludable from gross income under section 103(a)”.

(43)(A) Subsection (b) of section 148 of the 1986 Code (defining higher yielding investments) is amended by adding at the end thereof the following new paragraph:

“(3) ALTERNATIVE MINIMUM TAX BONDS TREATED AS INVESTMENT PROPERTY IN CERTAIN CASES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘investment property’ does not include any tax-exempt bond.

“(B) EXCEPTION.—With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C)), the term ‘investment property’ includes a specified private activity bond (as so defined).”

(B) Paragraph (2) of section 148(b) of the 1986 Code (defining investment property) is amended by striking the last sentence.

(C) The amendments made by this paragraph shall apply to obligations issued after March 31, 1988.

(44) Subparagraph (B) of section 46(c)(5) of the 1986 Code is amended—

(A) by striking out “INDUSTRIAL DEVELOPMENT BONDS” in the heading and inserting in lieu thereof “PRIVATE ACTIVITY BONDS”, and

(B) by striking “an industrial development bond (within the meaning of section 103(b)(2))” and inserting in lieu thereof “a private activity bond (within the meaning of section 141)”.

(b) AMENDMENTS RELATED TO SECTION 1311 OF THE REFORM ACT.—

(1) Section 1311 of the Reform Act is amended by redesignating subsection (d) as subsection (f), and by inserting after subsection (c) the following new subsections:

“(d) PUBLIC APPROVAL AND INFORMATION REPORTING.—Sections 147(f) and 149(e) of the 1986 Code shall apply to bonds issued after December 31, 1986.

“(e) REBATE REQUIREMENT FOR QUALIFIED SCHOLARSHIP FUNDING BONDS.—Section 150(d) of the 1986 Code shall apply to payments made after August 15, 1986.”

(2) Paragraph (2) of section 1311(b) of the Reform Act (relating to effective date for section 1301(f)) is amended by inserting “with respect to non-issued bond amounts elected” after “issued”.

(c) AMENDMENTS RELATED TO SECTION 1313 OF THE REFORM ACT.—

(1) Clause (i) of section 1313(a)(1)(B) of the Reform Act is amended by striking out “the proceeds” and inserting in lieu thereof “the net proceeds”.

(2)(A) Subparagraph (C) of section 1313(a)(3) of the Reform Act is amended by striking out “section 148” and inserting in lieu thereof “sections 143(g) and 148”.

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 30, 1987.

26 USC 148 note.

26 USC 141 note.

26 USC 141 note.

26 USC 141 note.

(3) Subparagraph (E) of section 1313(a)(3) of the Reform Act is amended by striking out “of such Code”.

(4) Paragraph (3) of section 1313(a) of the Reform Act is amended by adding at the end thereof the following new sentence: “In the case of a refunding bond described in paragraph (1) with respect to a qualified bond described in paragraph (2)(B), the requirements of section 1312(b)(1) which applied to such qualified bond shall be treated as specified in this paragraph with respect to such refunding bond.”

(5) Subparagraph (A) of section 1313(a)(4) of the Reform Act is amended by inserting “and by substituting ‘September 1, 1986’ for ‘August 16, 1986’” before the comma at the end thereof.

(6) Paragraph (2) of section 1313(b) of the Reform Act is amended by adding at the end thereof “For purposes of the preceding sentence, the determination of whether a bond is described in such subsection (o)(2)(A) shall be made without regard to any exception other than section 103(o)(2)(C) of such Code.”

(7) Subparagraph (F) of section 1313(b)(3) of the Reform Act is amended by striking out “of such Code”.

(8) Paragraph (3) of section 1313(b) of the Reform Act is amended by adding after subparagraph (F) the following new subparagraph:

“(G) Except as provided in the last sentence of subsection (c)(2) of this section, the requirements of section 145(b) (relating to \$150,000,000 limitation on bonds other than hospital bonds).”

(9) Paragraph (5) of section 1313(b) of the Reform Act is amended by striking out “are to be” and inserting in lieu thereof “are or will be”.

(10)(A) The heading for subsection (c) of section 1313 of the Reform Act is amended by striking out “CURRENT” and inserting in lieu thereof “CERTAIN”.

(B) Paragraph (1) of section 1313(c) of the Reform Act is amended—

(i) by striking out “apply to any bond” and inserting in lieu thereof “apply to any bond (or series of bonds)”, and

(ii) by striking out “law do not” and inserting in lieu thereof “law did not”.

(11)(A) Subparagraph (A) of section 1313(c)(1) of the Reform Act is amended to read as follows:

“(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,”.

(B) Paragraph (1) of section 1313(c) of the Reform Act is amended by adding at the end thereof the following new sentence:

“For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code.”

(C) Paragraph (1) of section 1313(c) of the Reform Act is amended by adding “and” at the end of subparagraph (B), by striking out subparagraph (C), and by redesignating subparagraph (D) as subparagraph (C).

(D) Subparagraph (B) of section 1313(c)(2) of the Reform Act is amended by striking out “and (D)” and inserting in lieu thereof “and (C)”.

(E) A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subparagraph (A) of section 1313(c)(1) of the Reform Act if such bond met the requirement of such subparagraph as in effect before the amendments made by this paragraph.

26 USC 141 note.

(12)(A) Subparagraph (N) of section 103(b)(6) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act (relating to termination dates), is amended by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by striking out clause (i) and inserting in lieu thereof the following new clauses:

“(i) **IN GENERAL.**—Except as provided in clause (ii), this paragraph shall not apply to any obligation issued after December 31, 1986.

“(ii) **CERTAIN REFUNDINGS.**—This paragraph shall apply to any obligation (or series of obligations) issued to refund an obligation issued on or before December 31, 1986, if—

“(I) the average maturity date of the issue of which the refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue,

“(II) the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, and

“(III) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of subclause (I), average maturity shall be determined in accordance with subsection (b)(14)(B)(i).”

(B) The date applicable under section 144(a)(12)(B) of the 1986 Code shall be treated as contained in section 103(b)(6)(N)(iii) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, for purposes of any bond issued to refund a bond to which such section 103(b)(6)(N)(iii) applies.

26 USC 144 note.

(13) Paragraph (2) of section 1313(c) of the Reform Act is amended—

26 USC 141 note.

(A) by striking out “apply to any bond” and inserting in lieu thereof “apply to any bond (or series of bonds)”,

(B) by striking out “subsection does not” and inserting in lieu thereof “subsection did not”, and

(C) by striking out “the proceeds” in subparagraph (A)(i) and inserting in lieu thereof “the net proceeds”.

(14)(A) Section 1313 of the Reform Act is amended by adding at the end thereof the following new subsection:

“(d) **MORTGAGE AND STUDENT LOAN TARGETING RULES TO APPLY TO LOANS MADE MORE THAN 3 YEARS AFTER THE DATE OF THE ORIGINAL ISSUE.**—Subsections (a)(3) and (b)(3) shall be treated as including the requirements of subsections (e) and (f) of section 143 and paragraphs (3) and (4) of section 144(b) of the 1986 Code with respect to bonds the proceeds of which are used to finance loans made more than 3 years after the date of the issuance of the original bond.”

(B) The amendment made by subparagraph (A) shall apply with respect to refunding bonds issued after October 16, 1987.

26 USC 141 note.

26 USC 103 note.

(15) A bond issued to refund an obligation described in section 103(o)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall not be treated as described in section 144(b) of the 1986 Code unless it is described in section 144(b)(1)(A) of the 1986 Code.

26 USC 141 note.

(d) AMENDMENTS RELATED TO SECTION 1314 OF THE REFORM ACT.—

(1) Subsection (a) of section 1314 of the Reform Act is amended by adding at the end thereof the following: “The preceding sentence shall not apply to the first advance refunding after September 25, 1985, of a bond issued before September 26, 1985.”

(2) Subsection (f) of section 1314 of the Reform Act is amended by striking out “December” and inserting in lieu thereof “August”.

(3) Section 1314 of the Reform Act is amended by redesignating subsection (g) as subsection (i) and by inserting after subsection (f) the following new subsections:

“(g) TERMINATION OF MORTGAGE BOND POLICY STATEMENT REQUIREMENT.—Paragraph (5) of section 103A(j) of the 1954 Code (relating to policy statement) shall not apply to any bond issued after August 15, 1986, and shall not apply to nonissued bond amounts elected under section 25 of the 1986 Code after such date.

“(h) ARBITRAGE RESTRICTION ON INVESTMENTS IN INVESTMENT-TYPE PROPERTY.—In the case of a bond issued before August 16, 1986 (September 1, 1986 in the case of a bond described in section 1312(c)(2)), section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to investment-type property but only for purposes of determining whether any bond issued after October 16, 1987, to advance refund such bond (or a bond which is part of a series of refundings of such bond) is an arbitrage bond (within the meaning of section 148(a) of the 1986 Code).”

(e) AMENDMENTS RELATED TO SECTION 1315 OF THE REFORM ACT.—

(1) Subsection (c) of section 1315 of the Reform Act is amended—

(A) by inserting “for calendar year 1986” after “1954 Code” each place it appears,

(B) by striking out “before August 16” each place it appears and inserting in lieu thereof “on August 15”, and

(C) by adding at the end thereof the following new sentence:

“The preceding sentence shall not apply to the extent section 1313(b)(5) treats any bond as a private activity bond for purposes of section 146 of the 1986 Code.”

(2)(A) Subsection (e) of section 1315 of the Reform Act is amended by adding at the end thereof the following new sentence: “The preceding sentence shall not apply to any bond which (if issued on August 15, 1986) would have been an industrial development bond (as defined in section 103(b)(2) of the 1954 Code).”

26 USC 141 note.

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 10, 1987.

(f) AMENDMENTS RELATED TO SECTION 1316 OF THE REFORM ACT.—

26 USC 141 note.

(1)(A) Subsections (a)(1), (b)(1), (c)(1), and (f)(1) of section 1316 of the Reform Act are each amended by inserting “and as having a

carryforward purpose described in section 146(f)(5) of such Code" after "the 1986 Code".

(B) The amendment made by subparagraph (A) shall apply only with respect to carryforwards of volume cap for years after 1986.

26 USC 141 note.

(2) Subsection (c) of section 1316 of the Reform Act is amended by adding at the end thereof the following new paragraph:

26 USC 141 note.

"(4) APPLICATION OF SECTION 147(b).—A bond to which this subsection applies (other than a refunding bond) shall be treated as meeting the requirements of section 147(b) of the 1986 Code if the average maturity (determined in accordance with section 147(b)(2)(A) of such Code) of the issue of which such bond is a part does not exceed 20 years. A bond issued to refund (or which is part of a series of bonds issued to refund) a bond described in the preceding sentence shall be treated as meeting the requirements of such section if the refunding bond has a maturity date not later than the date which is 20 years after the date on which the original bond was issued."

(3) Paragraph (1) of section 1316(e) of the Reform Act is amended—

(A) by inserting "(and section 103(h)(2)(B)(ii) of the 1954 Code)" after "1986 Code" the first place it appears, and

(B) by inserting "(and section 103(b)(16) of the 1954 Code)" after "1986 Code" in the last sentence.

(4) Paragraph (2) of section 1316(g) of the Reform Act is amended—

(A) by striking out "described in the paragraph (3)" in subparagraph (A) and inserting in lieu thereof "issued to provide a facility described in paragraph (3)", and

(B) by striking out "which paragraph (3)" in subparagraph (C) and inserting in lieu thereof "which such paragraph (3)".

(5) Paragraph (6) of section 1316(g) of the Reform Act is amended by inserting "(and the provisions of section 1314)" after "section 1301".

(6) Paragraph (7) of section 1316(g) of the Reform Act is amended to read as follows:

"(7) In the case of a bond described in section 632(d) of the Tax Reform Act of 1984—

"(A) section 141 of the 1986 Code shall be applied without regard to subsection (a)(2) and paragraphs (4) and (5) of subsection (b),

"(B) paragraphs (1) and (2) of section 141(b) of the 1986 Code shall be applied by substituting '25 percent' for '10 percent' each place it appears, and

"(C) section 149(b) of the 1986 Code shall not apply.

This paragraph shall not apply to any bond issued after December 31, 1990."

(7)(A) Subparagraph (A) of section 1316(g)(8) of the Reform Act is amended by inserting "and as having a carryforward purpose described in section 146(f)(5) of such Code" after "the 1986 Code"

(B) The amendment made by subparagraph (A) shall apply only with respect to carryforwards of volume cap for years after 1986.

26 USC 141 note.

(8) Paragraph (2) of section 1316(j) of the Reform Act is amended to read as follows:

Florida.

"(2) by adding at the end thereof the following new sentence: 'In the case of refunding obligations not to exceed \$100,000,000 issued after October 21, 1986, by Dade County, Florida, for the purpose of advance refunding its Aviation Revenue Bonds (Series J), the first sentence of this paragraph shall be applied by substituting "the date which is 1 year after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988" for "December 31, 1984" and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply.'"

26 USC 141 note.

(9) Paragraph (2) of section 1316(k) of the Reform Act is amended by striking out "\$55,000,000 must be redeemed no later than November 1, 1987" and inserting in lieu thereof "no more than \$55,000,000 shall be outstanding later than November 1, 1987".

(10) Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 is amended by adding at the end of subsection (r) the following new sentence:

"Section 148(f) of the Internal Revenue Code of 1986 and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply to any bonds described in paragraph (1) which may be issued as a result of the amendments made by the Tax Reform Act of 1986."

(11) Subsection (l) of section 1316 of the Reform Act is hereby repealed.

Community
development.
Urban areas.
26 USC 141 note.

(g) AMENDMENTS RELATED TO SECTION 1317 OF THE REFORM ACT.—

(1) Subparagraph (J) of section 1317(2) of the Reform Act is amended by striking out "began construction in 1980" and inserting in lieu thereof ", a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate".

(2) Subparagraph (C) of section 1317(3) of the Reform Act is amended to read as follows:

Baseball.
Football.
Stadiums.

"(C) A facility is described in this subparagraph if—

"(i) it is one or more stadiums to be used either by an American League baseball team or a National Football League team currently using a stadium in a city having a population in excess of 2,500,000 and described in section 146(d)(3) of the 1986 Code,

"(ii) the bonds to be used to provide financing for one or more such stadiums are issued by a political subdivision or a State agency pursuant to a resolution approving an inducement resolution adopted by a State agency on November 20, 1985, as it may be amended (whether or not the beneficiaries of such issue or issues are the beneficiaries (if any) specified in such inducement resolution and whether or not the number of such stadiums and the locations thereof are as specified in such inducement resolution) or pursuant to P.A. 84-1470 of the State in which such city is located (and by an agency created thereby), and

"(iii) such stadium or stadiums are located in the city described in (i).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$250,000,000. In the case of any carryforward of volume cap for one or more stadiums described in the first sentence of this subparagraph, such carryforward shall be valid with respect to bonds issued for

such stadiums notwithstanding any other provision of the 1986 Code or the 1954 Code, and whether or not (i) there is a change in the number of stadiums or the beneficiaries or sites of the stadium or stadiums and (ii) the bonds are issued by either of the state agencies described in the first sentence of this subparagraph."

(3)(A) Subparagraph (P) of section 1317(3) of the Reform Act is amended—

(i) by striking out "approved" and inserting in lieu thereof "authorized", and

(ii) by striking out "December 9, 1985" and inserting in lieu thereof "December 2, 1985".

(B) Section 1317(3)(A) of the Reform Act is amended by striking out "domed".

(C) Section 1317(3)(U) of the Reform Act is amended by deleting "coliseum complex." and inserting in lieu thereof "coliseum complex, or is a renovation of an existing stadium located in Oakland, California, and used by an American League baseball team."

California.
Baseball.

(D) Section 1317(3)(W) of the Reform Act is amended by striking out "\$225,000,000" and inserting "\$25,000,000".

(4) Paragraph (3) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(Z) A facility is described in this subparagraph if—

"(i) such facility was a redevelopment project that was approved in concept by the city council sitting as the redevelopment agency in October 1984, and

"(ii) \$20,000,000 in funds for such facility was identified in a 5-year budget approved by the city redevelopment agency on October 25, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$80,000,000."

(5) Paragraph (4) of section 1317 of the Reform Act is amended—

(A) by striking out "1986. The bonds" and inserting in lieu thereof "1986, and the bonds",

(B) by striking out "and" at the end the subparagraph (A), and

(C) by adding "and" at the end of subparagraph (B).

(6) Subparagraph (W) of section 1317(6) of the Reform Act is amended to read as follows:

"(W) A project is described in this subparagraph if such project is—

"(i) a part of the Kenosha Downtown Redevelopment project, and

"(ii) located in an area bounded—

"(I) on the east by the east wall of the Army Corps of Engineers Confined Disposal Facility (extended),

"(II) on the north by 48th Street (extended),

"(III) on the west by the present Chicago & Northwestern Railroad tracks, and

"(IV) on the south by the north line of Eichelman Park (60th Street) (extended).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$105,000,000."

(7) Paragraph (6) of section 1317 of the Reform Act is amended by redesignating subparagraph (X) as subparagraph (Z) and by inserting after subparagraph (W) the following new subparagraphs:

California.

“(X) A project is described in this subparagraph if a redevelopment plan for such project was approved by the city council of Bell Gardens, California, on June 12, 1979. The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$10,000,000.

“(Y) Nothing in this paragraph shall be construed as having the effect of exempting from tax interest on any bond issued after June 10, 1987, if such interest would not have been exempt from tax were such bond issued on August 15, 1986.”

(8) The last sentence of subparagraph (A) of section 1317(7) of the Reform Act is amended by inserting before the period “and section 149(d)(2) of the 1986 Code shall not apply to bonds so treated”.

(9) Subparagraph (D) of section 1317(7) of the Reform Act is amended to read as follows:

“(D) A facility is described in this subparagraph if—

“(i) it is a convention, trade, or spectator facility,

“(ii) a regional convention, trade, and spectator facilities study committee was created before March 19, 1985, with respect to such facility, and

“(iii) feasibility and preliminary design consultants were hired on May 1, 1985, and October 31, 1985, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed the excess of \$175,000,000 over the amount of bonds to which paragraph (48)(B) applies.”

(10) Clause (ii) of section 1317(7)(G) of the Reform Act is amended to read as follows:

“(ii) such facility’s location was approved in December 1985 by a task force created jointly by the Governor of the State within which such facility will be located and the mayor of the capital city of such State, and”.

(11) Subparagraph (J) of section 1317(7) of the Reform Act is amended—

(A) by striking out “civic festival” in clause (i) and inserting in lieu thereof “aquafestival”,

(B) by striking out clause (ii) and inserting in lieu thereof the following:

“(ii) a referendum was held on April 6, 1985, in which voters permitted the city council to lease 130 acres of dedicated parkland for the purpose of constructing such facility, and”, and

(C) by striking out “\$5,000,000” and inserting in lieu thereof “\$10,000,000”.

(12) Subparagraph (E) of section 1317(9) of the Reform Act is amended by striking out “March 5, 1985” and inserting in lieu thereof “March 6, 1985”.

(13) Clause (iii) of section 1317(9)(J) of the Reform Act is amended by striking out all that precedes “by the governor” and inserting in lieu thereof the following:

“(iii) such facility’s location was approved in December 1985 by a task force created jointly”.

(14) Subparagraph (A) of section 1317(11) of the Reform Act is amended by striking out “and section 142(a)” and inserting in lieu thereof “in section 142(a)”.

(15) Subparagraph (C) of section 1317(11) of the Reform Act is amended to read as follows:

“(C) A facility is described in this subparagraph if it is described in section 1865(c)(2)(C) of this Act.”

(16) Subparagraph (X) of section 1317(13) of the Reform Act is amended by striking out the last sentence.

(17) Paragraph (13) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

“(AA) A residential rental property project is described in this subparagraph if it is the Carriage Trace residential rental project in Clinton, Tennessee. The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$10,000,000. Tennessee.
Real property.

“(BB) A residential rental property project is described in this subparagraph if—

“(i) a contract to purchase such property was dated as of August 9, 1985, Contracts.

“(ii) there was an inducement resolution adopted on September 27, 1985, for the issuance of obligations to finance such property,

“(iii) there was a State court final validation of such financing on November 15, 1985, and

“(iv) the certificate of nonappeal from such validation was available on December 15, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$27,750,000.”

(18) Paragraph (14) of section 1317 of the Reform Act is amended by striking out “\$90,000,000” and inserting in lieu thereof “\$130,000,000” and by inserting “incorporated on February 20, 1985” before the period at the end of the 1st sentence.

(19) Subparagraph (B) of section 1317(15) of the Reform Act is amended—

(A) by striking out all that follows “agreement with” in clause (i) and inserting in lieu thereof “an underwriter to provide planning and financial guidance for a possible bond issue, and”, and

(B) by striking out “certificates” in clause (ii) and inserting in lieu thereof “bond issue”

(20) Paragraph (16) of section 1317 of the Reform Act is amended by striking out the last sentence.

(21) Clause (i) of section 1317(19)(D) of the Reform Act is amended by striking out “light rail transitway” and inserting in lieu thereof “fixed guideway”.

(22) Paragraph (20) of section 1317 of the Reform Act is amended by striking out “Section 148(f)” and inserting in lieu thereof “Subsections (c)(2) and (f) of section 148”.

(23) Subparagraph (B) of section 1317(21) of the Reform Act is amended—

(A) by striking out “Subsection (c)” and inserting in lieu thereof “Subsections (c)(2), and

(B) by striking out "103A(g)(5)(C)l" and inserting in lieu thereof "103A(g)(5)(C)".

(24) Paragraph (22) of section 1317 of the Reform Act is amended to read as follows:

"(22) DOWNTOWN REDEVELOPMENT PROJECT.—Subsection (b) of section 626 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

"(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

"(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

"(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than \$10,000,000 in connection with such project, and

"(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed \$85,000,000 and such obligations must be issued before January 1, 1992.'"

(25) Subparagraph (A) of section 1317(24) of the Reform Act is amended by adding at the end thereof the following: "The last paragraph of this section shall not apply to the treatment under the preceding sentence."

(26)(A) Clause (i) of section 1317(25)(A) of the Reform Act is amended by striking out "3 counties" and inserting in lieu thereof "1 or more of 3 counties".

(B) Clause (i) of section 1317(25)(B) of the Reform Act is amended by adding at the end thereof the following new sentence: "For purposes of applying section 146(k) of the 1986 Code, the public utility facility described in subparagraph (A) shall be treated as described in paragraph (2) of such section and such paragraph shall be applied without regard to the requirement that the issuer establish that a State's share of the use of a facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility."

(27) Subparagraph (I) of section 1317(27) of the Reform Act is amended by adding at the end thereof the following: "For purposes of determining whether any bond to which this subparagraph applies is a qualified small issue bond, there shall not be taken into account under section 144(a) of the 1986 Code capital expenditures with respect to any facility of the United States Government and there shall not be taken into account any bond allocable to the United States Government."

(28) Clause (i) of section 1317(29)(B) of the Reform Act is amended by striking out all that follows "1993" and inserting in lieu thereof ", by the State of Connecticut, and".

(29) Subparagraph (D) of section 1317(29) of the Reform Act is amended by striking out "the net proceeds" and inserting in lieu thereof "the proceeds".

(30) Section 1317(33)(A)(ii) of the Reform Act is amended—

(A) by striking out "on" and inserting in lieu thereof "dated" each place it appears, and

(B) by inserting "dated on December 1, 1985" after "(Series 1985A and 1985B)" in subclause (III).

(31) Subparagraph (B) of section 1317(33) of the Reform Act is amended—

(A) by striking out "and before August 7, 1988," and

(B) by adding at the end thereof the following new sentence: "The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$90,000,000."

(32) Subparagraph (G) of section 1317(33) of the Reform Act is amended by striking out "subparagraph (H)" and inserting in lieu thereof "subparagraph (F)".

(33) Subparagraph (H) of section 1317(33) of the Reform Act is amended—

(A) by striking out clause (ii) and inserting in lieu thereof the following:

"(ii) the proceeds of the issue are to be used to finance projects (to be determined by such university and the issuer) which are similar to those projects intended to be financed by bonds that were the subject of a request transmitted to Congress on November 7, 1985", and

(B) by adding at the end thereof the following: "Bonds to which this subparagraph applies shall be treated as qualified 501(c)(3) bonds if such bonds would not (if issued on August 15, 1986) be industrial development bonds (as defined in section 103(b)(2) of the 1954 Code), and section 147(f) of the 1986 Code shall not apply to the issue of which such bonds are a part. Bonds issued to finance facilities described in this subparagraph shall be treated as issued to finance such facilities notwithstanding the fact that a period in excess of 1 year has expired since the facilities were placed in service."

(34) Subparagraph (K) of section 1317(33) of the Reform Act is amended—

(A) by striking out "the issue is" in clause (i) and inserting in lieu thereof "the issue or issues are",

(B) by inserting "at least" before "900 units",

(C) by striking out "2,000 square feet" and inserting in lieu thereof "245,000 square feet", and

(D) by striking out "\$150,000,000" and inserting in lieu thereof "\$112,000,000".

(35) Paragraph (33) of section 1317 of the Reform Act is amended by striking out subparagraphs (M), (N), and (O) and inserting in lieu thereof the following new subparagraphs:

"(M) Proceeds of an issue are described in this subparagraph if such issue is issued on behalf of the Society of the New York Hospital to finance completion of a project commenced by such hospital in 1981 for construction of a diagnostic and treatment center or to refund bonds issued on behalf of such hospital in connection with the construction of such diagnostic and treatment center or to finance construction and renovation projects associated with an inpatient psychiatric care facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$150,000,000.

"(N) Any bond to which section 145(b) of the 1986 Code does not apply by reason of this paragraph (other than

Health care
facilities.

subparagraph (A) thereof shall be taken into account in determining whether such section applies to any later issue.

“(O) In the case of any refunding bond—

“(i) to which any subparagraph of this paragraph applies, and

“(ii) to which the last sentence of section 1313(c)(2) applies,

such bond shall be treated as having such subparagraph apply (and the refunding bond shall be treated for purposes of such section as issued before January 1, 1986, and as not being an advance refunding) unless the issuer elects the opposite result.”

(36) Paragraph (36) of section 1317 of the Reform Act is amended by striking out “\$80,000,000” and inserting in lieu thereof “\$400,000,000”.

(37) Paragraph (38) of section 1317 of the Reform Act is amended by striking out “and sections 148 and 149”.

(38) Paragraphs (39) and (40) of section 1317 of the Reform Act are amended to read as follows:

“(39) CERTAIN BONDS TREATED AS QUALIFIED 501(c)(3) BONDS.—

A bond issued as part of an issue shall be treated for purposes of part IV of subchapter B of chapter 1 of the 1986 Code as a qualified 501(c)(3) bond if—

“(A) such bond would not (if issued on August 15, 1986) be an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), and

“(B) such issue was approved by city voters on January 19, 1985, for construction or renovation of facilities for the cultural and performing arts.

The aggregate face amount of bonds to which this paragraph applies shall not exceed \$5,000,000.

“(40) CERTAIN LIBRARY BONDS.—In the case of a bond issued before January 1, 1986, by the City of Los Angeles Community Redevelopment Agency to provide the library and related structures associated with the City of Los Angeles Central Library Project, the ownership and use of the land and facilities associated with such project by persons which are not governmental units (or payments from such persons) shall not adversely affect the exclusion from gross income under section 103 of the 1954 Code of interest on such bonds.”

(39) Paragraph (41) of section 1317 of the Reform Act is amended to read as follows:

“(41) CERTAIN REFUNDING OBLIGATIONS FOR CERTAIN POWER FACILITIES.—With respect to 2 net billed nuclear power facilities located in the State of Washington on which construction has been suspended, the requirements of section 147(b) of the 1986 Code shall be treated as satisfied with respect to refunding bonds issued before 1992 if—

“(A) each refunding bond has a maturity date not later than the maturity date of the refunded bond, and

“(B) the facilities have not been placed in service as of the date of issuance of the refunding bond.

The aggregate face amount of bonds to which this paragraph applies shall not exceed \$2,000,000,000. Section 146 of the 1986 Code and the last paragraph of this section shall not apply to bonds to which this paragraph applies.”

California.

Washington.

(40) Paragraph (43) of section 1317 of the Reform Act is amended by inserting before the period "and the Internal Revenue Code of 1986 shall be applied without regard to section 149(d)(2)."

(41) Paragraph (44) of section 1317 of the Reform Act is amended—

(A) by inserting after "1986 Code" the following: "and the temporary period limitation of section 148(c)(2) of the 1986 Code",

(B) by striking out "\$100,000,000" and inserting in lieu thereof "\$200,000,000", and

(C) by striking out "Hospitals Bond Pool" in the second item in the table and inserting in lieu thereof "Hospital Equipment Loan Council".

(42) Paragraph (48) of section 1317 of the Reform Act is amended by striking out "either" in the material preceding subparagraph (A) and inserting in lieu thereof "any".

(43) Subparagraph (B) of section 1317(48) of the Reform Act is amended by striking out "subparagraph (O)" and inserting in lieu thereof "paragraph (6)(U)".

(44) Paragraph (48) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) A facility which is part of a project described in paragraph (6)(O). The aggregate face amount of bonds to which this subparagraph applies shall not exceed \$20,000,000."

(45) Paragraph (49) of section 1317 of the Reform Act is amended—

(A) by striking out "149(d)" and inserting in lieu thereof "149(d)(2)", and

(B) by inserting "United States" before "Housing Act of 1937".

(46) Paragraph (50) of section 1317 of the Reform Act is amended to read as follows:

"(50) TRANSITIONED BONDS SUBJECT TO CERTAIN RULES.—In the case of any bond to which any provision of this section applies, except as otherwise expressly provided, sections 103 and 103A of the 1954 Code shall be applied as if the requirements of sections 147(g), 148, and 149(d) of the 1986 Code were included in each such section."

(47) Paragraph (51) of section 1317 of the Reform Act is amended—

(A) by striking out "Section 141(a)" and inserting in lieu thereof "Section 141(b)", and

(B) by striking out "141(a)(3)" and inserting in lieu thereof "141(b)(3)".

(48) Paragraph (52) of section 1317 of the Reform Act is amended by striking out "This section" and inserting in lieu thereof "Except as otherwise provided in this section, this section".

(49) The material preceding subparagraph (A) of section 1317(2) of the Reform Act is amended by striking out "section 103(b)(4)(C)" and inserting in lieu thereof "section 103(b)(4)(F)".

(50) Clause (ii) of section 1317(27)(H) of the Reform Act is amended by striking out "November 14, 1985" and inserting in lieu thereof "November 13, 1985".

(51) Subparagraph (I) of section 1317(33) of the Reform Act is amended by striking out "November 11, 1985" and inserting in lieu thereof "November 1, 1985".

(52) Subparagraph (J) of section 1317(3) of the Reform Act is amended by striking out "October 29" in clause (iv) and inserting in lieu thereof "November 5".

26 USC 141 note. (h) AMENDMENTS RELATED TO SECTION 1318 OF THE REFORM ACT.—Section 1318 of the Reform Act (relating to definitions, etc., relating to effective dates and transitional rules) is amended—

(1) by inserting "(a) DEFINITIONS.—" before "For purposes of this subtitle—", and

(2) by adding at the end thereof the following new subsections:

"(b) MINIMUM TAX TREATMENT.—

"(1) IN GENERAL.—Any bond described in paragraph (2) shall not be treated as a private activity bond for purposes of section 57 of the 1986 Code unless such bond would (if issued on August 7, 1986) be—

"(A) an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), or

"(B) a private loan bond (as defined in section 103(o)(2)(A) of the 1954 Code, without regard to any exception from such definition other than section 103(o)(2)(C) of such Code).

"(2) BONDS DESCRIBED.—For purposes of paragraph (1), a bond is described in this paragraph if—

"(A) the amendments made by section 1301 do not apply to such bond by reason of section 1312 or 1316(g),

"(B) any provision of section 1317 applies to such bond, or

"(C) the proceeds of such bond are used to refund any bond referred to in subparagraph (A) or (B) (or any bond which is part of a series of refundings of such a bond) if the requirements of paragraphs (1), (2), and (3) of subsection (c) are met with respect to the refunding bond.

"(c) CURRENT REFUNDINGS NOT TAKEN INTO ACCOUNT IN APPLYING AGGREGATE LIMIT ON BONDS TO WHICH TRANSITIONAL RULES APPLY.—The limitation on the aggregate face amount of bonds to which any provision of section 1316(g) or 1317 applies shall not be reduced by the face amount of any bond the proceeds of which are to be used exclusively to refund any bond to which such provision applies (or any bond which is part of a series of refundings of such bond) if—

"(1) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(2) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(3) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of paragraph (1), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code. No limitation in section 1316(g) or 1317 on the period during which bonds may be issued under such section shall apply to any refunding bond which meets the requirements of this subsection.

"(d) SPECIAL RULE PERMITTING CARRYFORWARD OF VOLUME CAP FOR CERTAIN TRANSITIONED PROJECTS.—A bond to which section 1312 or 1317 applies shall be treated as having a carryforward purpose described in section 146(f)(5) of the 1986 Code, and the requirement

of section 146(f)(2)(A) of the 1986 Code shall be treated as met if such project is identified with reasonable specificity. The preceding sentence shall not apply so as to permit a carryforward with respect to any qualified small issue bond."

(i) APPLICATION TO 501 (c) (3) BONDS.—In accordance with section 1302 of the Reform Act, each amendment and other provision of this Act which applies to private activity bonds shall, unless otherwise expressly provided, apply to qualified 501(c)(3) bonds.

26 USC 501 note.

SEC. 1014. AMENDMENTS RELATED TO TITLE XIV OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1401 OF THE REFORM ACT.—

(1) Subsection (e) of section 672 of the 1986 Code is amended to read as follows:

"(e) GRANTOR TREATED AS HOLDING ANY POWER OR INTEREST OF GRANTOR'S SPOUSE.—

"(1) IN GENERAL.—For purposes of this subpart, a grantor shall be treated as holding any power or interest held by—

"(A) any individual who was the spouse of the grantor at the time of the creation of such power or interest, or

"(B) any individual who became the spouse of the grantor after the creation of such power or interest, but only with respect to periods after such individual became the spouse of the grantor.

"(2) MARITAL STATUS.—For purposes of paragraph (1)(A), an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married."

(2) Paragraph (3) of section 675 of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual."

(3) Subsection (c) of section 674 of the 1986 Code is amended by adding at the end thereof the following new sentence: "For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual."

(b) AMENDMENT RELATED TO SECTION 1402 OF THE REFORM ACT.—Section 673 of the 1986 Code is amended by adding at the end thereof the following new subsections:

"(c) SPECIAL RULE FOR DETERMINING VALUE OF REVERSIONARY INTEREST.—For purposes of subsection (a), the value of the grantor's reversionary interest shall be determined by assuming the maximum exercise of discretion in favor of the grantor.

"(d) POSTPONEMENT OF DATE SPECIFIED FOR REACQUISITION.—Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effective and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement."

(c) AMENDMENTS RELATED TO SECTION 1403 OF THE REFORM ACT.— 26 USC 645 note.

(1) If a beneficiary of a trust to which section 664 of the 1986 Code applies elects (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph apply, such beneficiary shall be entitled to the benefits of section 1403(c)(2) of the Reform Act with respect to amounts included in gross income under section 664(b) of the 1986 Code in the same manner as if such amounts were included in gross income under section 652(a) of the 1986 Code.

(2) Any trust beneficiary may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to waive the benefits of section 1403(c)(2) of the Reform Act.

(3)(A) For purposes of determining the gross income of any pass-thru entity, such pass-thru entity shall not be allowed the benefits of section 806(e)(2)(C) (other than with respect to income from a common trust fund) or 1403(c)(2) of the Reform Act if such pass-thru entity is required to change its taxable year by reason of the amendments made by section 806 or 1403 of the Reform Act.

(B) For purposes of subparagraph (A), the term "pass-thru entity" means any trust, partnership, S corporation, or common trust fund.

(4) If any trust was required to change its taxable year by the amendments made by section 1403 of the Reform Act, such change shall be treated as initiated by such trust and approved by the Secretary of the Treasury or his delegate.

(d) AMENDMENTS RELATED TO SECTION 1404 OF THE REFORM ACT.—

26 USC 6654.

(1) Subsection (a) of section 1404 of the Reform Act is amended—

(A) by striking out "Subsection (k) of section 6654" and inserting in lieu thereof "Subsection (l) of section 6654, as amended by section 1841 of this Act", and

(B) by striking out " '(k) TRUSTS'" and inserting in lieu thereof " '(l) TRUSTS'".

(2) Subsection (l) of section 6654 of the 1986 Code is amended to read as follows:

"(l) ESTATES AND TRUSTS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, this subsection shall apply to any estate or trust.

"(2) EXCEPTION FOR ESTATES AND CERTAIN TRUSTS.—With respect to any taxable year ending before the date 2 years after the date of the decedent's death, this section shall not apply to—

"(A) the estate of such decedent, or

"(B) any trust—

"(i) all of which was treated (under subpart E of part I of subchapter J of chapter 1) as owned by the decedent, and

"(ii) to which the residue of the decedent's estate will pass under his will.

"(3) EXCEPTION FOR CHARITABLE TRUSTS AND PRIVATE FOUNDATIONS.—This section shall not apply to any trust which is subject to the tax imposed by section 511 or which is a private foundation.

"(4) SPECIAL RULE FOR ANNUALIZATIONS.—In the case of any estate or trust to which this section applies, subsection (d)(2)(B)(i) shall be applied by substituting 'ending before the

date 1 month before the due date for the installment' for ending before the due date for the installment'."

(3) Subsection (g) of section 643 of the 1986 Code is amended—

- (A) by striking out the last sentence of paragraph (1), and
- (B) by amending paragraph (2) to read as follows:

"(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe."

(4) Subsection (g) of section 643 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) EXTENSION TO LAST YEAR OF ESTATE.—In the case of a taxable year reasonably expected to be the last taxable year of an estate—

"(A) any reference in this subsection to a trust shall be treated as including a reference to an estate, and

"(B) the fiduciary of the estate shall be treated as the trustee."

AMENDMENTS RELATED TO SECTION 1411 OF THE REFORM ACT.—

(1) Paragraph (3) of section 1(i) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) COORDINATION WITH SECTION 644.—If tax is imposed under section 644(a)(1) with respect to the sale or exchange of any property of which the parent was the transferor, for purposes of applying subparagraph (A) to the taxable year of the parent in which such sale or exchange occurs—

"(i) taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i), and

"(ii) the amount described in subparagraph (A)(ii) shall be increased by the amount of the excess referred to in section 644(a)(2)(A)."

(2) The last sentence of subparagraph (A) of section 1(i)(3) of the 1986 Code is amended by striking out "any deduction or credit" and inserting in lieu thereof "any exclusion, deduction, or credit".

(3) Subparagraph (A) of section 1(i)(4) of the 1986 Code is amended—

(A) by striking out "gross income for the taxable year which is not earned income" in clause (i) and inserting in lieu thereof "adjusted gross income for the taxable year which is not attributable to earned income",

(B) by striking out "his deduction" in clause (ii)(II) and inserting in lieu thereof "his deductions",

(C) by striking out "the deductions allowed" in clause (ii)(II) and inserting in lieu thereof "the itemized deductions allowed", and

(D) by striking out "gross income" in clause (ii)(II) and inserting in lieu thereof "adjusted gross income".

(4) Clause (iv) of section 6103(e)(1)(A) of the 1986 Code is amended by striking out "section 1(j)" and inserting in lieu thereof "section 1(i) or 59(j)".

(5)(A) Section 59 of the 1986 Code is amended by adding at the end thereof the following new subsection:

j) TREATMENT OF UNEARNED INCOME OF MINOR CHILDREN.—

“(1) **LIMITATION ON EXEMPTION AMOUNT.**—In the case of a child to whom section 1(i) applies, the exemption amount for purposes of section 55 shall not exceed the sum of—

“(A) such child’s earned income (as defined in section 911(d)(2)) for the taxable year, plus

“(B) \$1,000.

“(2) **LIMITATION BASED ON PARENTAL MINIMUM TAX.**—

“(A) **IN GENERAL.**—In the case of a child to whom section 1(i) applies, the amount of the tax imposed by section 55 shall not exceed such child’s share of the allocable parental minimum tax.

“(B) **ALLOCABLE PARENTAL MINIMUM TAX.**—For purposes of this paragraph, the term ‘allocable parental minimum tax’ means the excess of—

“(i) the tax which would be imposed by section 55 on the parent if—

“(I) the amount of the parent’s tentative minimum tax were increased by the aggregate of the tentative minimum taxes of all children of the parent to whom section 1(i) applies, and

“(II) the amount of the parent’s regular tax were increased by the aggregate of the regular taxes of all children of the parent to whom section 1(i) applies, over

“(ii) the tax imposed by section 55 on the parent without regard to this subparagraph.

“(C) **CHILD SHARE.**—A child’s share of any allocable parental minimum tax shall be determined under rules similar to the rules of section 1(i)(3)(B).

“(D) **OTHERS RULES MADE APPLICABLE.**—For purposes of this paragraph, rules similar to the rules of paragraphs (5) and (6) of section 1(i) shall apply.”

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1988.

(6) Subparagraph (A) of section 1(i)(5) of the 1986 Code is amended by striking out “custodial parent” and inserting in lieu thereof “custodial parent (within the meaning of section 152(e))”.

(7) Paragraph (3) of section 1(i) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) **SPECIAL RULE WHERE PARENT HAS DIFFERENT TAXABLE YEAR.**—Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child’s taxable year.”

(f) **AMENDMENT RELATED TO SECTION 1421 OF THE REFORM ACT.**—Subsection (a) of section 1421 of the Reform Act is amended by striking out “within the time prescribed for filing such return (including extensions thereof)”.

(g) **AMENDMENTS RELATED TO SECTION 1431 OF THE REFORM ACT.**—

(1) Subsection (a) of section 2611 of the 1986 Code is amended by striking out “generation-skipping transfers” and inserting in lieu thereof “generation-skipping transfer”.

(2) Subsection (b) of section 2611 of the 1986 Code is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

26 USC 59 note.

26 USC 2032A
note.

(3)(A) Section 2642 of the 1986 Code is amended by adding at the end thereof the following new subsection:

(e) SPECIAL RULES FOR CHARITABLE LEAD ANNUITY TRUSTS.—

“(1) IN GENERAL.—For purposes of determining the inclusion ratio for any charitable lead annuity trust, the applicable fraction shall be a fraction—

“(A) the numerator of which is the adjusted GST exemption, and

“(B) the denominator of which is the value of all of the property in such trust immediately after the termination of the charitable lead annuity.

“(2) ADJUSTED GST EXEMPTION.—For purposes of paragraph (1), the adjusted GST exemption is an amount equal to the GST exemption allocated to the trust increased by interest determined—

“(A) at the interest rate used in determining the amount of the deduction under section 2055 or 2522 (as the case may be) for the charitable lead annuity, and

“(B) for the actual period of the charitable lead annuity.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) CHARITABLE LEAD ANNUITY TRUST.—The term ‘charitable lead annuity trust’ means any trust in which there is a charitable lead annuity.

“(B) CHARITABLE LEAD ANNUITY.—The term ‘charitable lead annuity’ means any interest in the form of a guaranteed annuity with respect to which a deduction was allowed under section 2055 or 2522 (as the case may be).

“(4) COORDINATION WITH SUBSECTION (d).—Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.”

(B) The amendment made by subparagraph (A) shall apply for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987.

26 USC 2642
note.

(4)(A) Section 2642 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(f) SPECIAL RULES FOR CERTAIN INTER VIVOS TRANSFERS.—Except as provided in regulations—

Real property.

“(1) IN GENERAL.—For purposes of determining the inclusion ratio, if—

“(A) an individual makes an inter vivos transfer of property, and

“(B) the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of section 2035),

any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under paragraph (2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

“(2) VALUATION.—In the case of any property to which paragraph (1) applies, the value of such property shall be—

“(A) if such property is includible in the gross estate of the transferor (other than by reason of section 2035), its value for purposes of chapter 11, or

“(B) if subparagraph (A) does not apply, its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

“(3) ESTATE TAX INCLUSION PERIOD.—For purposes of this subsection, the term ‘estate tax inclusion period’ means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of—

“(A) the date on which there is a generation-skipping transfer with respect to such property, or

“(B) the date of the death of the transferor.

“(4) TREATMENT OF SPOUSE.—Except as provided in regulations, any reference in this subsection to an individual or transferor shall be treated as including a reference to the spouse of such individual or transferor.

“(5) COORDINATION WITH SUBSECTION (d).—Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.”

(B) Paragraph (2) of section 2642(a) of the 1986 Code is amended by striking out the last sentence.

(C) Subparagraph (A) of section 2642(b)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: “; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.”

(D) Subsection (b) of section 2642 of the 1986 Code is amended by inserting “Except as provided in subsection (f)—” immediately after the subsection heading.

(E) Subparagraph (B) of section 2642(b)(2) of the 1986 Code is amended—

(i) by striking out “at or after the death of the transferor” and inserting in lieu thereof “to property transferred as a result of the death of the transferor”; and

(ii) by striking out “AT OR AFTER DEATH” in the subparagraph heading and inserting in lieu thereof “TO PROPERTY TRANSFERRED AT DEATH”.

(F) Paragraph (3) of section 2642(b) of the 1986 Code is amended—

(i) by striking out “to any property is made during the life of the transferor but is” and inserting in lieu thereof “to any property not transferred as a result of the death of the transferor is”; and

(ii) by striking out “INTER VIVOS ALLOCATIONS” in the subparagraph heading and inserting in lieu thereof “ALLOCATIONS TO INTER VIVOS TRANSFERS”.

(5)(A) Paragraph (1) of section 2613(a) of the 1986 Code is amended by striking out “a person assigned” and inserting in lieu thereof “a natural person assigned”.

(B) Subsection (c) of section 2612 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) LOOK-THRU RULES NOT TO APPLY.—Solely for purposes of determining whether any transfer to a trust is a direct skip, the rules of section 2651(e)(2) shall not apply.”

(6) Subsection (c) of section 2652 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) CERTAIN SUPPORT OBLIGATIONS DISREGARDED.—The fact that income or corpus of the trust may be used to satisfy an obligation of support arising under State law shall be disregarded in determining whether a person has an interest in the trust, if—

Gifts and
property.

“(A) such use is discretionary, or

“(B) such use is pursuant to the provisions of any State law substantially equivalent to the Uniform Gifts to Minors Act.”

(7) Paragraph (2) of section 2612(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: “If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property.”

(8) Paragraph (2) of section 2652(c) of the 1986 Code is amended—

(A) by striking out “NOMINAL INTERESTS” in the paragraph heading and inserting in lieu thereof “INTERESTS”, and

(B) by striking out “the tax” and inserting in lieu thereof “any tax”.

(9) Paragraph (1) of section 2652(a) of the 1986 Code is amended—

(A) by striking out “a transfer of a kind” each place it appears and inserting in lieu thereof “any property”, and

(B) by adding at the end thereof the following new sentence:

“An individual shall be treated as transferring any property with respect to which such individual is the transferor.”

(10) Section 2663 of the 1986 Code is amended by striking out “and” at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new paragraph:

“(3) regulations providing for such adjustments as may be necessary to the application of this chapter in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b).”

(11) Paragraph (3) of section 2651(e) of the 1986 Code is amended to read as follows:

“(3) TREATMENT OF CERTAIN CHARITABLE ORGANIZATIONS AND GOVERNMENTAL ENTITIES.—Any—

“(A) organization described in section 511(a)(2),

“(B) charitable trust described in section 511(b)(2), and

“(C) governmental entity,

shall be assigned to the transferor’s generation.”

(12) Paragraph (2) of section 2654(a) of the 1986 Code is amended—

(A) by striking out “any increase” and inserting in lieu thereof “any increase or decrease”, and

(B) by striking out “such increase” and inserting in lieu thereof “such increase or decrease (as the case may be)”.

(13) Subsection (b) of section 2654 of the 1986 Code is amended to read as follows:

“(b) **CERTAIN TRUSTS TREATED AS SEPARATE TRUSTS.**—For purposes of this chapter—

“(1) the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and

“(2) substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts. Except as provided in the preceding sentence, nothing in this chapter shall be construed as authorizing a single trust to be treated as 2 or more trusts.”

(14) Paragraph (3) of section 2652(a) of the 1986 Code is amended—

(A) by striking out “any property” in subparagraphs (A) and (B) and inserting in lieu thereof “any trust”, and

(B) by striking out “may elect to treat such property” and inserting in lieu thereof “may elect to treat all of the property in such trust”.

(15) Paragraph (2) of section 2612(a) of the 1986 Code is amended to read as follows:

“(2) **CERTAIN PARTIAL TERMINATIONS TREATED AS TAXABLE.**—If, upon the termination of an interest in property held in trust by reason of the death of a lineal descendant of the transferor, a specified portion of the trust’s assets are distributed to 1 or more skip persons (or 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.”

(16) Paragraph (2) of section 2632(b) of the 1986 Code is amended by striking out “paragraph (1)” with respect to a prior direct skip” and inserting in lieu thereof “paragraph (1) with respect to a prior direct skip”.

(17)(A) Subsection (c) of section 2642 of the 1986 Code is amended to read as follows:

“(c) **TREATMENT OF CERTAIN DIRECT SKIPS WHICH ARE NONTAXABLE GIFTS.**—

“(1) **IN GENERAL.**—In the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

“(2) **EXCEPTION FOR CERTAIN TRANSFERS IN TRUST.**—Paragraph (1) shall not apply to any transfer to a trust for the benefit of an individual unless—

“(A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and

“(B) if such individual dies before the trust is terminated, the assets of such trust will be includible in the gross estate of such individual.

“(3) **NONTAXABLE GIFT.**—For purposes of this subsection, the term ‘nontaxable gift’ means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

“(A) section 2503(b) (taking into account the application of section 2513), or

“(B) section 2503(e).”

(B) Paragraph (1) of section 2642(d) of the 1986 Code is amended by striking out “(other than a nontaxable gift)”.

C) The amendments made by this paragraph shall apply to transfers after March 31, 1988.

26 USC 2642
note.

18) Clause (i) of section 2642(d)(2)(B) of the 1986 Code is amended to read as follows:

“(i) the value of the property involved in such transfer reduced by the sum of—

“(I) any Federal estate tax or state death tax actually recovered from the trust attributable to such property, and

“(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and”.

19) Paragraph (2) of section 2651(b) of the 1986 Code is amended by striking out “a spouse of the transferor” and inserting in lieu thereof “a spouse (or former spouse) of the transferor”.

20) Section 2652 of the 1986 Code is amended by adding at the end thereof the following new subsection:

Executor.—For purposes of this chapter, the term ‘executor’ meaning given such term by section 2203.”

AMENDMENTS RELATED TO SECTION 1433 OF THE REFORM ACT.—

1) Subsection (a) of section 1433 of the Reform Act is amended striking out “this part” and inserting in lieu thereof “this subtitle”.

26 USC 2601
note.

2) Paragraph (2) of section 1433(b) of the Reform Act is amended—

(A) by striking out “this part” in the material preceding subparagraph (A) and inserting in lieu thereof “this subtitle”,

(B) by inserting before the comma at the end of subparagraph (A) the following: “(or out of income attributable to corpus so added)”, and

(C) by inserting “or revocable trust” after “a will” in subparagraph (B).

3) (A) Subsection (b) of section 1433 of the Reform Act is amended by striking out paragraph (3) and inserting in lieu thereof the following new paragraphs:

“(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

“(A) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term ‘direct skip’ shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed \$2,000,000.

“(B) TREATMENT OF TRANSFERS IN TRUST.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if)—

“(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

“(ii) the assets of the trust will be includible in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

“(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed

to (or for the benefit of) such grandchild not less frequently than annually.

“(C) COORDINATION WITH SECTION 2653 (a) OF THE 1986 CODE.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

“(D) COORDINATION WITH TAXABLE TERMINATIONS AND TAXABLE DISTRIBUTIONS.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms ‘taxable termination’ and ‘taxable distribution’ shall not include any transfer which would be a direct skip but for subparagraph (A).

“(4) DEFINITIONS.—Terms used in this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986; except that section 2612(c)(2) of such Code shall not apply in determining whether an individual is a grandchild of the transferor.”

(B) Clause (iii) of section 1443(b)(3)(B) of the Reform Act (as amended by subparagraph (A)) shall apply only to transfers after June 10, 1987.

(4) Subsection (d) of section 1433 of the Reform Act is amended—

(A) by striking out “shall be treated as a direct skip” and inserting in lieu thereof “shall be treated as a direct skip to such grandchild”,

(B) by striking out “would be a direct skip” in subparagraph (B) and inserting in lieu thereof “would be a direct skip to a grandchild”, and

(C) by adding at the end thereof the following new sentence: “Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence.”

(5) Subparagraph (C) of section 1433(b)(2) of the Reform Act shall not exempt any direct skip from the amendments made by subtitle D of title XIV of the Reform Act if—

(A) such direct skip results from the application of section 2044 of the 1986 Code, and

(B) such direct skip is attributable to property transferred to the trust after October 21, 1988.

SEC. 1015. AMENDMENTS RELATED TO TITLE XV OF THE REFORM ACT.

(a) AMENDMENT RELATED TO SECTION 1501 OF THE REFORM ACT.—Subparagraph (B) of section 6724(d)(2) of the 1986 Code is amended by striking out “6031(b)” and inserting in lieu thereof “6031(b) or (c)”.

(b) AMENDMENTS RELATED TO SECTION 1503 OF THE REFORM ACT.—(1) Subparagraph (A) of section 6013(b)(5) of the 1986 Code is amended to read as follows:

“(A) COORDINATION WITH SECTION 6653.—For purposes of section 6653, where the sum of the amounts shown as tax on the separate returns of each spouse is less than the amount shown as tax on the joint return made under this subsection—

26 USC 2601
note.

26 USC 2601
note.

26 USC 2601
note.

“(i) such sum shall be treated as the amount shown on the joint return,

“(ii) any negligence (or disregard of rules or regulations) on either separate return shall be treated as negligence (or such disregard) on the joint return, and

“(iii) any fraud on either separate return shall be treated as fraud on the joint return.” Fraud.

(2)(A) Paragraph (1) of section 6653(a) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to negligence (or disregard of rules or regulations), there shall be added to the tax an amount equal to 5 percent of the underpayment.” Fraud.

(B) Paragraph (1) of section 6653(b) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.”

(C) Paragraph (2) of section 6601(e) of the 1986 Code is amended by striking out “6659” each place it appears and inserting in lieu thereof “6653, 6659”.

(3) Subsection (g) of section 6653 of the 1986 Code is amended by adding at the end thereof the following new sentence: “If any penalty is imposed under subsection (a) by reason of the preceding sentence, only the portion of the underpayment which is attributable to the failure described in the preceding sentence shall be taken into account in determining the amount of the penalty under subsection (a).”

(4) The amendments made by this subsection (other than paragraph (3)) shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1988.

26 USC 6001
note.

(c) AMENDMENT RELATED TO SECTION 1504 OF THE REFORM ACT.—The repeal made by section 8002(c) of the Omnibus Budget Reconciliation Act of 1986 shall take effect as if the Tax Reform Act of 1986 had been enacted on the day before the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

Effective date.
26 USC 6661
note.

(d) AMENDMENTS RELATED TO SECTION 1511 OF THE REFORM ACT.—Section 6621 of the 1986 Code is amended—

(1) by striking out “short-term Federal rate” each place it appears in subsections (a) and (b)(1) and inserting in lieu thereof “Federal short-term rate”, and

(2) by striking out “SHORT-TERM FEDERAL RATE” in the heading of subsection (b) and inserting in lieu thereof “FEDERAL SHORT-TERM RATE”.

(e) AMENDMENTS RELATED TO SECTION 1521 OF THE REFORM ACT.—

(1)(A) Paragraph (1) of section 6045(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person.”

Agriculture and
agricultural
commodities.

Effective date.
26 USC 6045
note.

Real property.

Effective date.
26 USC 6045
note.

Classified
information.
Defense and
national
security.

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 311(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

(2)(A) Subsection (e) of section 6045 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) PROHIBITION OF SEPARATE CHARGE FOR FILING RETURN.—It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1).”

(B) The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act.

(3) Subsection (e) of section 6045 of the 1986 Code is amended—

(A) by striking out “real estate broker” each place it appears in the text and inserting in lieu thereof “real estate reporting person”, and

(B) by striking out “REAL ESTATE BROKER” in the heading of paragraph (2) and inserting in lieu thereof “REAL ESTATE REPORTING PERSON”.

(f) AMENDMENT RELATED TO SECTION 1522 OF THE REFORM ACT.—Section 6050M of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(e) EXCEPTION FOR CERTAIN CLASSIFIED OR CONFIDENTIAL CONTRACTS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), this section shall not apply in the case of a contract described in paragraph (3).

“(2) REPORTING REQUIREMENT.—Each Federal executive agency which has entered into a contract described in paragraph (3) shall, upon a request of the Secretary which identifies a particular person, acknowledge whether such person has entered into such a contract with such agency and, if so, provide to the Secretary—

“(A) the information required under this section with respect to such person, and

“(B) such other information with respect to such person which the Secretary and the head of such Federal executive agency agree is appropriate.

“(3) DESCRIPTION OF CONTRACT.—For purposes of this subsection, a contract between a Federal executive agency and another person is described in this paragraph if—

“(A) the fact of the existence of such contract or the subject matter of such contract has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security, or

“(B) the head of such Federal executive agency (or his designee) pursuant to regulations issued by such agency determines, in writing, that filing the required return under this section would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity.”

(g) AMENDMENTS RELATED TO SECTION 1523 OF THE REFORM ACT.—Section 6676 of the 1986 Code is amended—

(1) by striking out “6049, or 6050N” in subsection (a)(3) and inserting in lieu thereof “or 6049”,

(2) by striking out “6049, or 6050N” in subsection (b)(1)(A) and inserting in lieu thereof “or 6049”, and

(3) by striking out “, DIVIDENDS, AND ROYALTIES” in the heading for subsection (b) and inserting in lieu thereof “AND DIVIDEND”.

(h) AMENDMENTS RELATED TO SECTION 1542 OF THE REFORM ACT.—Subsection (h) of section 6154 of the 1986 Code (as in effect before its repeal by the Revenue Act of 1987) is amended—

(1) by striking out “subject to the tax imposed by section 4940” in paragraph (1),

(2) by amending paragraph (2) to read as follows:

“(2) any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11, and”, and

(3) by adding at the end thereof the following new sentence:

“In the case of an organization described in paragraph (1), subsection (c) of section 6655 shall be applied by substituting ‘5th month’ for ‘third month’ and subsection (d)(3)(A) of section 6655 shall be applied by substituting ‘2 months’ for ‘3 months’ in clause (i), by substituting ‘4 months’ for ‘5 months’ in clause (ii), by substituting ‘7 months’ for ‘8 months’ in clause (iii), and by substituting ‘10 months’ for ‘11 months’ in clause (iv).”

(i) AMENDMENT RELATED TO SECTION 1551 OF THE REFORM ACT.—Clause (iii) of section 7430(c)(2)(A) of the 1986 Code is amended to read as follows:

“(iii) meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).”

(j) PROVISION RELATED TO SECTION 1556 OF THE REFORM ACT.—To the extent the salary recommendations submitted by the President on January 5, 1987, are inconsistent with the provisions of section 7443A(d)(1) of the 1986 Code, such recommendations shall not be effective for any period.

26 USC 7443A
note.

(k) AMENDMENT RELATED TO SECTION 1557 OF THE REFORM ACT.—

(1) Subsection (d) of section 7447 of the 1986 Code is amended by adding at the end thereof the following new sentence: “In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge.”

(2) The amendment made by paragraph (1) shall apply for purposes of determining the amount of retired pay for months beginning after the date of the enactment of this Act regardless of when the services under section 7447(c) of the 1986 Code were performed.

26 USC 7447
note.

(l) AMENDMENTS RELATED TO SECTION 1561 OF THE REFORM ACT.—

(1) Subsection (e)(2) of section 7609 of the 1986 Code is amended—

(A) by inserting “or the summoned party’s response to a summons described in subsection (f),” after “the summons described in subsection (c),”, and

(B) by striking out “the summons is issued other” and inserting in lieu thereof “the summons is issued”.

(2) Subsection (i) of section 7609 of the 1986 Code is amended—

(A) by striking out “the third-party recordkeeper” in paragraph (4) and inserting in lieu thereof “the summoned party”, and

(B) by inserting “AND SUMMONED PARTY” after “RECORD-KEEPER” in the subsection heading.

Effective date.
26 USC 7609
note.

(3) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(m) AMENDMENT RELATED TO SECTION 1562 OF THE REFORM ACT.—Subsection (d) of section 6212 of the 1986 Code is amended by adding at the end thereof the following new sentence: “Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.”

(n) AMENDMENT RELATED TO SECTION 1563 OF THE REFORM ACT.—Subparagraph (B) of section 6404(e)(1) of the 1986 Code is amended—

(1) by inserting “error or” before “delay”, and

(2) by inserting “erroneous or” before “dilatary”.

(o) AMENDMENT RELATED TO SECTION 1565 OF THE REFORM ACT.—Effective with respect to levies made after December 31, 1988, paragraph (10) of section 6334(a) of the 1986 Code is amended—

(1) in subparagraph (A)—

(A) by striking out “IV” and inserting in lieu thereof “III, IV, V”, and

(B) by adding “or” at the end thereof,

(2) in subparagraph (C) by striking out “21,” and inserting in lieu thereof “13, 21, 23,” and

(3) by striking out subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

26 USC 3402
note.

(p) AMENDMENT RELATED TO SECTION 1581 OF THE REFORM ACT.—Subsection (c) of section 1581 of the Reform Act is amended by adding at the end thereof the following new sentence:

“The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee.”

(q) GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.—

(1) Subsection (a) of section 6011 of the 1986 Code is amended by striking out “for the collection thereof” and inserting in lieu thereof “with respect to the collection thereof”.

Effective date.

(2) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(r) CERTAIN REFUNDABLE CREDITS TO BE ASSESSED UNDER DEFICIENCY PROCEDURES.—

(1) Subsection (a) of section 6201 of the 1986 Code is amended by striking out paragraph (4).

26 USC 6011
note.

(2) Paragraph (4) of section 6211(b) is amended to read as follows:

“(4) For purposes of subsection (a)—

“(A) any excess of the sum of the credits allowable under sections 32 and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

“(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax.”

(3) Subsection (h) of section 6211 of the 1986 Code is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(4) The amendments made by this subsection shall apply to notices of deficiencies mailed after the date of the enactment of this Act.

26 USC 6201
note.

NOTICE OF LIEN ON PERSONAL PROPERTY.—

(1) Subsection (f) of section 6323 of the 1986 Code is amended—

(A) by inserting “, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State” after “situated” in paragraph (1)(A)(ii), and

(B) by adding at the end thereof the following new paragraph:

“(5) NATIONAL FILING SYSTEMS.—The filing of a notice of lien shall be governed solely by this title and shall not be subject to any other Federal law establishing a place or places for the filing of liens or encumbrances under a national filing system.”

(2) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

Effective date.
26 USC 6323
note.

EFFECT OF HONORING LEVY.—

(1) Subsection (d) of section 6332 of the 1986 Code is amended—

(A) by inserting “and any other person” after “delinquent taxpayer”, and

(B) by striking out the last sentence thereof.

(2) The amendment made by this subsection shall apply to levies issued after the date of the enactment of this Act.

26 USC 6332
note.

COLLECTION AFTER COMMENCEMENT OF JUDICIAL PROCEEDING.—

(1) The last sentence of section 6502(a) of the 1986 Code is amended to read as follows: “If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes enforceable.”

(2) The amendment made by this subsection shall apply to levies issued after the date of the enactment of this Act.

26 USC 6502
note.

AMENDMENTS RELATED TO TITLE XVI OF THE REFORM ACT.

AMENDMENTS RELATED TO SECTION 1603 OF THE REFORM ACT.—

(1)(A) Subparagraph (A) of section 501(c)(25) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“For purposes of clause (iii), the term ‘real property’ shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.”

(B) The amendment made by subparagraph (A) shall apply with respect to property acquired by the organization after June 10, 1987, except that such amendment shall not apply to any property acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times hereafter before such acquisition.

Real property.
Contracts.
Corporations.
26 USC 501 note.

(2) Subparagraph (D) of section 501(c)(25) of the 1986 Code is amended by striking out so much of such subparagraph as precedes clause (i) and inserting in lieu thereof the following:

“(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—”.

(3)(A) Paragraph (25) of section 501(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(E)(i) For purposes of this title—

“(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

“(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

“(ii) For purposes of this subparagraph, the term ‘qualified subsidiary’ means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

“(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.”

(B) Subparagraph (C) of section 501(c)(25) of the 1986 Code is amended by inserting “or” at the end of clause (iii), by striking out “, or” at the end of clause (iv) and inserting in lieu thereof a period, and by striking out clause (v).

(4) Paragraph (25) of section 501(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(F) For purposes of subparagraph (A), the term ‘real property’ includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.”

(5)(A) Paragraph (9) of section 514(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(E) SPECIAL RULES FOR ORGANIZATIONS DESCRIBED IN SECTION 501(C)(25).—

“(i) IN GENERAL.—In computing under section 512 the unrelated business taxable income of a disqualified holder of an interest in an organization described in section 501(c)(25), there shall be taken into account—

“(I) as gross income derived from an unrelated trade or business, such holder’s pro rata share of the items of income described in clause (ii)(I) of such organization, and

“(II) as deductions allowable in computing unrelated business taxable income, such holder’s pro rata share of the items of deduction described in clause (ii)(II) of such organization.

Such amounts shall be taken into account for the taxable year of the holder in which (or with which) the taxable year of such organization ends.

“(ii) DESCRIPTION OF AMOUNTS.—For purposes of clause (i)—

“(I) gross income is described in this clause to the extent such income would (but for this paragraph) be treated under subsection (a) as derived from an unrelated trade or business, and

“(II) any deduction is described in this clause to the extent it would (but for this paragraph) be allowable under subsection (a)(2) in computing unrelated business taxable income.

“(iii) DISQUALIFIED HOLDER.—For purposes of this subparagraph, the term ‘disqualified holder’ means any shareholder (or beneficiary) which is not described in clause (i) or (ii) of subparagraph (C).”

(B) The amendment made by subparagraph (A) shall apply with respect to interests in the organization acquired after June 10, 1987, except that such amendment shall not apply to any such interest acquired after June 10, 1987, pursuant to a binding written contract in effect on June 10, 1987, and at all times thereafter before such acquisition.

26 USC 514 note.

(6) The last sentence of section 514(c)(9)(B) of the 1986 Code is amended by striking out “clause (vi)” and inserting in lieu thereof “this paragraph”.

(b) REPEAL OF SECTION 1608 OF THE REFORM ACT.—Section 1608 of the Reform Act is hereby repealed.

26 USC 170 note.

SEC. 1017. AMENDMENTS RELATED TO TITLE XVII OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1701 OF THE REFORM ACT.—Clause (i) of section 51(d)(12)(B) of the 1986 Code is amended by striking out “subsection (a)(1)” and inserting in lieu thereof “subsection (a)”.

(b) AMENDMENT RELATED TO SECTION 1702 OF THE REFORM ACT.—Subsection (j) of section 6652 of the 1986 Code, as added by section 1702(b) of the Reform Act and as in effect before its repeal by the Revenue Act of 1987, is amended by inserting “(and the corresponding provision of section 4041(d)(1))” after “section 4041(a)(1)”.

(c) AMENDMENTS RELATED TO SECTION 1703 OF THE REFORM ACT.—

(1)(A) Subsection (a) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by redesignating paragraph (2) as paragraph (3) and by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

“(1) IN GENERAL.—There is hereby imposed a tax at the rate specified in paragraph (2) on the earlier of—

“(A) the removal, or

“(B) the sale,

of gasoline by the refiner or importer thereof or the terminal operator.

“(2) RATES OF TAX.—

“(A) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

“(i) the Highway Trust Fund financing rate, and

“(ii) the Leaking Underground Storage Tank Trust Fund financing rate.

“(B) RATES.—For purposes of subparagraph (A)—

“(i) the Highway Trust Fund financing rate is 9 cents a gallon, and

“(ii) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent a gallon.”

(B) Subsections (b) and (c) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, are each amended by striking out “subsection (d)” and inserting in lieu thereof “subsection (a)”.

(C) Subsection (e) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended—

(i) by striking out “subsection (d)(2)(A)” in paragraph (1) and inserting in lieu thereof “subsection (a)(2)”, and

(ii) by striking out “subsection (d)(2)(B)” each place it appears in paragraph (2) and inserting in lieu thereof “subsection (a)(2)”.

(D) Section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by striking out subsection (d) and by redesignating subsection (e) as subsection (d).

(2) Subsection (b) of section 34 of the 1986 Code is amended by striking out “section 6421(i) or 6427(j)” and inserting in lieu thereof “section 6421(j) or 6427(k)”.

(3) Sections 4041(b)(1)(C) and 6427(m)(3) of the 1986 Code are each amended by striking out “section 6421(d)(2)” and inserting in lieu thereof “section 6421(e)(2)”.

(4) Paragraph (3) of section 4041(f) of the 1986 Code is amended to read as follows:

“(3) TERMINATION.—Except with respect to the taxes imposed by subsection (d), paragraph (1) shall not apply on and after October 1, 1993.”

(5) The amendment made by section 10502(d)(4) of the Revenue Act of 1987 shall be treated as if included in the amendments made by section 1703 of the Reform Act except that the reference to section 4091 of the Internal Revenue Code of 1986 shall not apply to sales before April 1, 1988.

(6) Section 6421 of the 1986 Code is amended by redesignating subsection (i) (relating to income tax credit in lieu of payment) and subsection (j) (relating to cross references) as subsections (j) and (k), respectively.

(7) Subsections (a) and (b)(1) of section 6421 of the 1986 Code are each amended by striking out “subsection (i)” and inserting in lieu thereof “subsection (j)”.

(8) Paragraph (2) of section 6421(j) of the 1986 Code (as redesignated by paragraph (6)) is amended by striking out “subsection (c)(2)” and inserting in lieu thereof “subsection (d)(2)”.

(9) Sections 7210, 7603, 7604(b), 7604(c)(2), 7605(a), 7609(c)(1), and 7610(c) of the 1986 Code are each amended by striking out “6421(f)(2)” and inserting in lieu thereof “6421(g)(2)”.

(10) Paragraph (2) of section 6427(k) of the 1986 Code is amended by striking out “subsection” and all that follows and inserting in lieu thereof “paragraph (2) or (3) of subsection (i).”

(11) Paragraph (6) of section 6511(i) of the 1986 Code is amended by striking out “section 6421(c)” and inserting in lieu thereof “section 6421(d)”.

(12) Subparagraph (G) of section 1703(e)(2) of the Reform Act is amended by striking out all that follows “are amended” and inserting in lieu thereof “by striking out ‘6427(i)(2)’ and inserting in lieu thereof ‘6427(j)(2)’.”

100 Stat. 2774.

(13) Paragraph (2) of section 1703(f) of the Reform Act is amended by adding at the end thereof the following new sentence: “All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of the Internal Revenue Code of 1986 shall apply to the floor stocks taxes imposed by this section.”

26 USC 4081
note.

(14) Paragraph (1) of section 4081(c) of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by striking out “3 cents” and inserting in lieu thereof “3½ cents”.

(15) Subsection (d) of section 6421 of the 1986 Code is amended by adding at the end thereof the following new paragraph: “(3) APPLICATION TO SALES UNDER SUBSECTION (c).—For purposes of this subsection, gasoline shall be treated as used for a purpose referred to in subsection (c) when it is sold for such a purpose.”

Petroleum and
petroleum
products.

(16) Section 4222(d) of the 1986 Code is amended by striking out “4083” and inserting in lieu thereof “4101”.

1018. AMENDMENTS RELATED TO TITLE XVIII OF THE REFORM ACT.

AMENDMENT RELATED TO SECTION 1801 OF THE REFORM ACT.—

Section (iii) of section 1801(a)(2)(A) of the Reform Act is amended to read as follows:

26 USC 168 note.

“(iii) a person became a partner in such partnership (or a beneficiary in such trust) after its formation but before September 26, 1985.”

AMENDMENTS RELATED TO SECTION 1802 OF THE REFORM ACT.—

(1) The last sentence of section 31(g)(17)(L) of the Tax Reform Act of 1984, as added by section 1802(a)(10)(G) of the Reform Act, is amended—

26 USC 168 note.

(A) by striking out “Registry of Deeds” each place it appears and inserting in lieu thereof “Register of Deed”, and

(B) by striking out “May 7, 1985” and inserting in lieu thereof “May 7, 1984”.

(2) Subparagraph (E) of section 168(j)(9) of the 1986 Code (as amended by section 1802(a)(2) of the Reform Act and as in effect before the amendments made by section 201 of the Reform Act) is amended—

(A) by striking out “this paragraph” in clauses (i) and (ii)(I) and inserting in lieu thereof “this paragraph and paragraph (8)”, and

(B) by striking out clause (iii) and inserting in lieu thereof the following:

“(iii) TAX-EXEMPT CONTROLLED ENTITY.—

“(I) IN GENERAL.—The term ‘tax-exempt controlled entity’ means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (in value) of the stock in such corpora-

tion is held by 1 or more tax-exempt entities (other than a foreign person or entity).

“(II) ONLY 5-PERCENT SHAREHOLDERS TAKEN INTO ACCOUNT IN CASE OF PUBLICLY TRADED STOCK.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (7)) shall be treated as 1 entity.

“(III) SECTION 318 TO APPLY.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof).”

(c) AMENDMENT RELATED TO SECTION 1803 OF THE REFORM ACT.—

26 USC 1281
note.

(1) Subparagraph (A) of section 1803(a)(8) of the Reform Act is amended by striking out “September 27, 1985” and inserting in lieu thereof “December 31, 1985”.

(2) Subsection (c) of section 1278 of the 1986 Code is amended by inserting before the period “, including regulations providing proper adjustments in the case of a bond the principal of which may be paid in 2 or more payments”.

(3) Section 1278(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) BASIS ADJUSTMENT.—The basis of any bond in the hands of the taxpayer shall be increased by the amount included in gross income pursuant to this subsection.”

(d) AMENDMENTS RELATED TO SECTION 1804 OF THE REFORM ACT.—

26 USC 311 note.

(1) Paragraph (3) of section 1804(b) of the Reform Act is amended by striking out “Paragraph (3) of section 54” and inserting “Paragraph (3) of section 54(d)”.

26 USC 311 note.

(2) Clause (i) of section 54(d)(3)(D) of the Tax Reform Act of 1984 is amended by striking out “subtitle D of title VI” and inserting “subtitle D of title VI of the Tax Reform Act of 1986”.

(3) Clause (ii) of section 54(d)(3)(D) of the Tax Reform Act of 1984 (as added by section 1804(b)(3) of the Tax Reform Act of 1986) is amended—

(A) by striking out “December 9, 1968,” each place it appears and inserting in lieu thereof “December 10, 1968,” and

(B) by striking out “October 5, 1981” and inserting in lieu thereof “March 2, 1978,”.

(4) Subsection (b) of section 312 of the 1986 Code is amended by striking out “of any property” and inserting in lieu thereof “of any property (other than an obligation of such corporation)”.

(5)(A) Section 361 of the 1986 Code is amended to read as follows:

“SEC. 361. NONRECOGNITION OF GAIN OR LOSS TO CORPORATIONS; TREATMENT OF DISTRIBUTIONS.

“(a) GENERAL RULE.—No gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and

anges property, in pursuance of the plan of reorganization, ly for stock or securities in another corporation a party to the reorganization.

b) EXCHANGES NOT SOLELY IN KIND.—

“(1) **GAIN.**—If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

“(A) **PROPERTY DISTRIBUTED.**—If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

“(B) **PROPERTY NOT DISTRIBUTED.**—If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized.

The amount of gain recognized under subparagraph (B) shall not exceed the sum of the money and the fair market value of the other property so received which is not so distributed.

“(2) **LOSS.**—If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

“(3) **TREATMENT OF TRANSFERS TO CREDITORS.**—For purposes of paragraph (1), any transfer of the other property or money received in the exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3).

c) TREATMENT OF DISTRIBUTIONS.—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation a party to a reorganization on the distribution to its shareholders of property in pursuance of the plan of reorganization.

“(2) **DISTRIBUTIONS OF APPRECIATED PROPERTY.—**

“(A) **IN GENERAL.**—If—

“(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

“(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

“(B) **QUALIFIED PROPERTY.**—For purposes of this subsection, the term ‘qualified property’ means—

“(i) any stock in (or right to acquire stock in) the distributing corporation or obligation of the distributing corporation, or

“(ii) any stock in (or right to acquire stock in) another corporation which is a party to the reorganization or

obligation of another corporation which is such a part of the corporation if such stock (or right) or obligation is received by the distributing corporation in the exchange.

“(C) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the market value of such property shall be treated as not less than the amount of such liability.

“(3) TREATMENT OF CERTAIN TRANSFERS TO CREDITORS.—For purposes of this subsection, any transfer of qualified property by the corporation to its creditors in connection with the reorganization shall be treated as a distribution to its shareholders pursuant to the plan of reorganization.

“(4) COORDINATION WITH OTHER PROVISIONS.—Section 311 and subpart B of part II of this subchapter shall not apply to a distribution referred to in paragraph (1).”

(B) Section 358 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(f) DEFINITION OF NONRECOGNITION PROPERTY IN CASE OF SECTION 361 EXCHANGE.—For purposes of this section, the property permitted to be received under section 361 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation a party to the reorganization.”

(C) Section 355 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(c) TAXABILITY OF CORPORATION ON DISTRIBUTION.—Section 355 shall apply to any distribution—

“(1) to which this section (or so much of section 356 as relates to this section) applies, and

“(2) which is not in pursuance of a plan of reorganization in the same manner as if such distribution were a distribution to which subpart A of part I applies; except that subsection (b) of section 311 shall not apply to any distribution of stock or securities in the controlled corporation.”

(D) Subsection (c) of section 336 of the 1986 Code (as amended by section 631 of the Reform Act) is amended to read as follows:

“(c) EXCEPTION FOR LIQUIDATIONS WHICH ARE PART OF A REORGANIZATION.—

“For provision providing that this subpart does not apply to distributions in pursuance of a plan of reorganization, see section 361(c)(4).”

(E) Subsection (a) of section 311 of the 1986 Code is amended by striking out “distribution, with respect to its stock,” and inserting in lieu thereof “distribution (not in complete liquidation) with respect to its stock”.

(F) The table of sections for subpart C of part III of subchapter C of chapter 1 of the 1986 Code is amended by striking out item relating to section 361 and inserting in lieu thereof the following new item:

“Sec. 361. Nonrecognition of gain or loss to corporations; treatment of distributions.”

(G) Effective with respect to transfers on or after June 1, 1988, section 351 of the 1986 Code is amended by redesignating

subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

(f) TREATMENT OF CONTROLLED CORPORATION.—If—

“(1) property is transferred to a corporation (hereinafter in this subsection referred to as the ‘controlled corporation’) in an exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

“(2) such exchange is not in pursuance of a plan of reorganization,

section 311 shall apply to any transfer in such exchange by the controlled corporation in the same manner as if such transfer were a distribution to which subpart A of part I applies.”

(6) Subparagraph (A) of section 280G(b)(5) of the 1986 Code is amended—

(A) in clause (i) by striking out “section 1361(b)” and inserting in lieu thereof “section 1361(b) but without regard to paragraph (1)(C) thereof”, and

(B) by adding at the end thereof the following: “Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder’s redemption and liquidation rights.”

(7) Subparagraph (B) of section 280G(b)(5) of the 1986 Code (relating to shareholder approval requirements) is amended by adding at the end thereof the following new sentence:

“The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.”

(8) Paragraph (5) of section 280G(d) of the 1986 Code is amended by striking out “officer or any member” and inserting in lieu thereof “officer of any member”.

(9) Paragraph (3) of section 338(e) of the 1986 Code is amended by striking out “which meet the 80 percent requirements of subparagraphs (A) and (B) of subsection (d)(3)” and inserting in lieu thereof “which meet the requirements of section 1504(a)(2)”.

(10)(A) Paragraph (7) of section 1504(b) of the 1986 Code is amended to read as follows:

“(7) A DISC (as defined in section 992(a)(1)).”

(B) Section 1504 of the 1986 Code is amended by adding at the end thereof the following new subsection:

(f) SPECIAL RULE FOR CERTAIN AMOUNTS DERIVED FROM A CORPORATION PREVIOUSLY TREATED AS A DISC.—In determining the consolidated taxable income of an affiliated group for any taxable year beginning after December 31, 1984, a corporation which had been a DISC and which would otherwise be a member of such group shall not be treated as such a member with respect to—

“(1) any distribution (or deemed distribution) of accumulated DISC income which was not treated as previously taxed income under section 805(b)(2)(A) of the Tax Reform Act of 1984, and

“(2) any amount treated as received under section 805(b)(3) of such Act.”

(g) PROVISION RELATED TO SECTION 1806 OF THE REFORM ACT.—If—

(1) on a return for the 1st taxable year of the trusts involved beginning after March 1, 1984, 2 or more trusts were treated as

a single trust for purposes of the tax imposed by chapter 1 of the Internal Revenue Code of 1954,

(2) such trusts would have been required to be so treated but for the amendment made by section 1806(b) of the Reform Act, and

(3) such trusts did not accumulate any income during such taxable year and did not make any accumulation distributions during such taxable year,

then, notwithstanding the amendment made by section 1806(b) of the Reform Act, such trusts shall be treated as one trust for purposes of such taxable year.

(f) AMENDMENTS RELATED TO SECTION 1807 OF THE REFORM ACT.—

(1) Paragraphs (1)(A) and (2)(E) of section 468B(d) of the 1986 Code are each amended by striking out “the taxpayer” and inserting in lieu thereof “the taxpayer (or any related person)”.

(2) Subparagraph (A) of section 468B(d)(2) of the 1986 Code is amended to read as follows:

“(A) which is established pursuant to a court order and which extinguishes completely the taxpayer’s tort liability with respect to claims described in subparagraph (D),”.

(3) Clause (i) of section 1807(a)(7)(C) of the Reform Act is amended to read as follows:

“(i) any portion of such fund which is established pursuant to a court order and with qualified payments, which meets the requirements of subparagraphs (C) and (D) of section 468B(d)(2) of the Internal Revenue Code of 1954 (as added by this paragraph), and with respect to which an election is made under subparagraph (F) thereof, shall be treated as a designated settlement fund for purposes of section 468B of such Code,”.

(4) Paragraph (2) of section 468B(b) of the 1986 Code is amended—

(A) by striking out “the corporation,” and inserting in lieu thereof “a corporation,” and

(B) by striking out “no other” and inserting in lieu thereof “No other”.

(5)(A) Section 468B of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(g) CLARIFICATION OF TAXATION OF CERTAIN FUNDS.—Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.”

(B) Subparagraph (D) of section 1807(a)(7) of the Reform Act is hereby repealed.

(g) AMENDMENTS RELATED TO SECTION 1810 OF THE REFORM ACT.—

(1) Paragraph (5) of section 1810(a) of the Reform Act is amended by striking out “section 125(b)(5)” each place it appears and inserting in lieu thereof “section 121(b)(5)”.

(2) Section 133(d)(3)(B)(iii) of the Tax Reform Act of 1984, as amended by section 1810(i)(2) of the Reform Act, is amended by striking out “Tax Reform Act of 1985” and inserting in lieu thereof “Tax Reform Act of 1986”.

26 USC 468B
note.

Regulations.

26 USC 904 note.

26 USC 959 note.

(3) Clause (iv) of section 7701(b)(5)(A) of the 1986 Code is amended by striking out "section 274(k)(2)" and inserting in lieu thereof "section 274(l)(1)(B)".

AMENDMENT RELATED TO SECTION 1821 OF THE REFORM ACT.—

(1) Subsection (e) of section 812 of the 1986 Code (relating to dividends from certain subsidiaries not included in gross investment income) is amended to read as follows:

(e) DIVIDENDS FROM CERTAIN SUBSIDIARIES NOT INCLUDED IN GROSS INVESTMENT INCOME.—

"(1) IN GENERAL.—For purposes of this section, the term 'gross investment income' shall not include any dividend received by the life insurance company which is a 100 percent dividend.

"(2) 100 PERCENT DIVIDEND DEFINED.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

"(B) CERTAIN DIVIDENDS OUT OF TAX-EXEMPT INTEREST, ETC.—The term '100 percent dividend' does not include any distribution by a corporation to the extent such distribution is out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this subparagraph).

"(C) CERTAIN DIVIDENDS RECEIVED BY FOREIGN CORPORATIONS.—The term '100 percent dividends' does not include any dividend described in section 805(a)(4)(E) (relating to certain dividends in the case of foreign corporations)."

(2) The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 211 of the Tax Reform Act of 1984.

Effective date.
26 USC 812 note.

AMENDMENT RELATED TO SECTION 1822 OF THE REFORM ACT.—
Clause (i) of section 216(b)(4)(C) of the Tax Reform Act of 1984 (relating to section 818(c) elections made by certain acquired companies) is amended by striking out "clause (i)" and inserting in lieu thereof "subclause (I)".

26 USC 801 note.

AMENDMENT RELATED TO SECTION 1825 OF THE REFORM ACT.—
Paragraph (4) of section 1825(a) of the Reform Act (relating to amendments related to section 221 of the Tax Reform Act of 1984) is amended by striking out "Section 7702(e)(2)" and inserting in lieu thereof "Effective with respect to contracts entered into after October 22, 1986, section 7702(e)(2)".

Contracts.
26 USC 7702
note.

AMENDMENTS RELATED TO SECTION 1826 OF THE REFORM ACT.—

(1) Paragraph (5) of section 72(s) of the 1986 Code is amended by striking out "or" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", or", and by adding at the end thereof the following new subparagraph:

"(D) which is a qualified funding asset (as defined in section 130(d), but without regard to whether there is a qualified assignment)."

(2) The paragraph heading of paragraph (5) of section 72(s) of the 1986 Code is amended by striking out "ANNUITY CONTRACTS WHICH ARE PART OF QUALIFIED PLANS" and inserting in lieu thereof "CERTAIN ANNUITY CONTRACTS".

AMENDMENTS RELATED TO SECTION 1842 OF THE REFORM ACT.—

(1) Subsection (c) of section 425 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) TRANSFERS BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in subsection (a) of section 1041—

“(A) such transfer shall not be treated as a disposition for purposes of this part, and

“(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor.”

(2) Paragraph (1) of section 425(c) of the 1986 Code is amended by striking out “paragraph (2) and (3)” and inserting in lieu thereof “paragraphs (2), (3), and (4)”.

(3) Effective with respect to transfers after June 21, 1988, subsection (d) of section 1041 of the 1986 Code is amended—

(A) by striking out “Paragraph (1) of subsection (a)” and inserting in lieu thereof “Subsection (a)”, and

(B) by striking out “the spouse” and inserting in lieu thereof “the spouse (or former spouse)”.

(m) AMENDMENTS RELATED TO SECTION 1866 OF THE REFORM ACT.—

26 USC 103 note.

(1) Section 1866 of the Reform Act is amended by striking out “obligation issued to refund” and inserting in lieu thereof “obligation (or series of obligations) issued to refund”.

(2)(A) Paragraph (1) of section 1866 of the Reform Act is amended to read as follows:

“(1) the average maturity of the issue of which the refunding obligation is a part does not exceed the average maturity of the obligations to be refunded by such issue,”

(B) Section 1866 of the Reform Act is amended by adding at the end thereof the following new sentence: “For purposes of paragraph (1), average maturity shall be determined in accordance with subsection (b)(14)(B)(i) of such Code.”

(3) Paragraph (4) of section 1866 of the Reform Act is amended by striking out “30 days” and inserting in lieu thereof “90 days”.

(4) Section 1866 of the Reform Act is amended by adding “and” at the end of paragraph (2), by striking out paragraph (3), and by redesignating paragraph (4) as paragraph (3).

26 USC 103 note.

(5) A refunding obligation issued before July 1, 1987, shall be treated as meeting the requirement of paragraph (1) of section 1866 of the Reform Act if such obligation met the requirement of such paragraph as enacted by the Reform Act.

(n) AMENDMENTS RELATED TO SECTION 1869 OF THE REFORM ACT.—

26 USC 103
note.

(1) Clause (ii) of section 1869(c)(3)(A) of the Reform Act is amended by striking out “pursuant to the exercise of eminent domain” and inserting in lieu thereof “(by a governmental unit having the power to exercise eminent domain)”.

(2) Subparagraph (C) of section 1869(c)(3) of the Reform Act is amended by inserting “(or similar issues)” after “resulting from the issue”.

(o) AMENDMENTS RELATED TO SECTION 1875 OF THE REFORM ACT.—

(1) Clause (ii) of section 6230(a)(2)(A) of the 1986 Code is amended by striking out “nonpartnership items” and inserting in lieu thereof “nonpartnership items (other than by reason of section 6231(b)(1)(C))”.

(2) Subsection (g) of section 1246 of the 1986 Code (as redesignated by this Act) is amended by striking out "1248(g)(3)" and inserting in lieu thereof "1248(g)(2)".

(3) Subsection (f) of section 6229 of the 1986 Code is amended by adding at the end thereof the following new sentence: "The period described in the preceding sentence (including any extension period under this sentence) may be extended with respect to any partner by agreement entered into by the Secretary and such partner."

Contracts.

AMENDMENT RELATED TO SECTION 1878 OF THE REFORM ACT.—
 Paragraph (1) of section 852(e) of the 1986 Code is amended by striking out "subsection (a)(3)" and inserting in lieu thereof "subsection (a)(2)".

AMENDMENTS RELATED TO SECTION 1879 OF THE REFORM ACT.—
 (1) Subclause (II) of section 28(b)(2)(A)(ii) of the 1986 Code is amended to read as follows:

"(II) before the date on which an application with respect to such drug is approved under section 505(b) or 507 of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Service Act; and"

(2) The last sentence of section 1361(d)(3) of the 1986 Code is amended by striking out "treated as a separate trust under section 663(c)" and inserting in lieu thereof "within the meaning of section 663(c)".

(3) Subsection (p) of section 1879 of the Reform Act is amended— 26 USC 83 note.

(A) by striking out "Subsection (a)" in paragraph (2) and inserting "Paragraph (1)", and

(B) by striking out "subsection (a)" each place it appears in paragraphs (2) and (3) and inserting in lieu thereof "paragraph (1)".

(4)(A) Subsection (d) of section 1286 of the 1986 Code is amended to read as follows:

(1) SPECIAL RULES FOR TAX-EXEMPT OBLIGATIONS.—

"(1) IN GENERAL.—In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

"(A) the amount of the original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon—

"(i) shall be treated as original issue discount on a tax-exempt obligation to the extent such discount does not exceed the tax-exempt portion of such discount, and

"(ii) shall be treated as original issue discount on an obligation which is not a tax-exempt obligation to the extent such discount exceeds the tax-exempt portion of such discount,

"(B) subsection (b)(1)(A) shall not apply, and

"(C) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the sum of—

"(i) the interest accrued but not paid before such bond or coupon was disposed of (and not previously reflected in basis), plus

"(ii) the amount included in gross income under subsection (b)(1)(B).

“(2) **TAX-EXEMPT PORTION.**—For purposes of paragraph (1), the tax-exempt portion of the original issue discount determined under subsection (a) is the excess of—

“(A) the amount referred to in subsection (a)(1), over

“(B) an issue price which would produce a yield to maturity as of the purchase date equal to the lower of—

“(i) the coupon rate of interest on the obligation from which the coupons were separated, or

“(ii) the yield to maturity (on the basis of the purchase price) of the stripped obligation or coupon.

The purchaser of any stripped obligation or coupon may elect to apply clause (i) by substituting ‘original yield to maturity’ for ‘coupon rate of interest’.”

(B)(i) Except as provided in clause (ii), the amendment made by subparagraph (A) shall apply to any purchase or sale after June 10, 1987, of any stripped tax-exempt obligation or stripped coupon from such an obligation.

(ii) If—

(I) any person held any obligation or coupon in stripped form on June 10, 1987, and

(II) such obligation or coupon was held by such person on such date for sale in the ordinary course of such person’s trade or business,

the amendment made by subparagraph (A) shall not apply to any sale of such obligation or coupon by such person and shall not apply to any such obligation or coupon while held by another person who purchased such obligation or coupon from the person referred to in subclause (I).

(5) Clause (ii) of section 368(a)(2)(F) of the 1986 Code is amended—

(A) by striking out the two parenthetical phrases in the first sentence, and

(B) by adding at the end thereof the following new sentence: “For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust.”

(r) **AMENDMENTS RELATED TO SECTION 1895 OF THE REFORM ACT.**—

(1) Subsection (b) of section 1895 of the Reform Act is amended by striking out paragraphs (1) and (2).

(2)(A) Clause (ii) of section 3121(u)(2)(B) of the 1986 Code is amended by striking out “or” at the end of subclause (IV), by striking out the period at the end of subclause (V) and inserting in lieu thereof “, or”, and by inserting after subclause (V) the following new subclause:

“(VI) by an individual in a position described in section 1402(c)(2)(E).”

(B) The amendment made by subparagraph (A) shall apply to services performed after March 31, 1986.

(s) **MISCELLANEOUS PROVISIONS.**—

(1) Subsection (a) of section 8021 of the 1986 Code is amended by striking out “6103(d)” and inserting in lieu thereof “6103(f)”.

(2)(A) Section 2503 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(f) **TREATMENT OF CERTAIN LOANS OF ARTWORKS.**—

26 USC 1286
note.

42 USC 1395ww
and note.

“(1) **IN GENERAL.**—For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer (and the value of such qualified work of art shall be determined as if such loan had not been made) if—

“(A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and

“(B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

Loans.

“(2) **DEFINITIONS.**—For purposes of this section—

“(A) **QUALIFIED WORK OF ART.**—The term ‘qualified work of art’ means any archaeological, historic, or creative tangible personal property.

“(B) **PRIVATE FOUNDATION.**—The term ‘private foundation’ has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3)).”

(B) The amendment made by subparagraph (A) shall apply to loans after July 31, 1969.

26 USC 2508 note.

(3)(A) Subparagraph (B) of section 1563(d)(1) of the 1986 Code is amended by striking out “subsection (e)(1)” and inserting in lieu thereof “paragraphs (1), (2), and (3) of subsection (e)”

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after the date of the enactment of this Act.

26 USC 1563 note.

ADDITIONAL AMENDMENTS RELATED TO PENSION PLANS.—

(1) **AMENDMENTS RELATED TO SECTION 1826 OF THE REFORM ACT.**—

(A) Section 72(s)(7) of the 1986 Code is amended by striking out “primary annuity” and inserting in lieu thereof “primary annuitant”.

(B) Section 72(q)(2)(B) of the 1986 Code is amended by striking out the last parenthesis.

(C) Section 419A(f)(5) of the 1986 Code is amended by striking out “accounts” and inserting in lieu thereof “account”.

(D) Section 1826(c) of the Reform Act is amended by striking out “made” and inserting in lieu thereof “commencing”.

26 USC 72 note.

(2) **AMENDMENTS RELATED TO SECTION 1851 OF THE REFORM ACT.**—

(A) Section 1851(a) of the Reform Act is amended by striking out paragraph (4) thereof.

26 USC 419A.

(B) Subclause (II) of section 512(a)(3)(E)(ii) of the 1986 Code is amended, (i) by striking out “subclause (II)” and inserting in lieu thereof “subclause (I)”, and (ii) by striking out the comma at the end thereof and inserting in lieu thereof a period.

(C) Section 419(a)(1) of the 1986 Code is amended by striking out “subchapter” and inserting in lieu thereof “chapter”.

(D) Subparagraph (B) of section 1851(a)(3) of the Reform Act is amended by inserting “, section 505, and section 4976(b)(1)(B)” after “section 419A”.

26 USC 419A note.

(3) **AMENDMENTS RELATED TO SECTION 1852 OF THE REFORM ACT.**—

26 USC 401 note.

(A) Paragraph (4) of section 1852(a) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

“(C) An individual whose required beginning date would, but for the amendment made by subparagraph (A), occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986.”

26 USC 415.

(B) Section 1852(h)(2) of the Reform Act is amended by striking out “section 416(l)” and inserting in lieu thereof “section 415(l)”.

26 USC 401 note.

(C) Section 1852(h)(1) of the Reform Act is amended by striking out “Subsection” and inserting in lieu thereof “Effective for years beginning after December 31, 1985, subsection”.

(D) Subparagraph (E) of section 408(d)(3) of the 1986 Code is amended by striking out “subparagraph” and inserting in lieu thereof “paragraph”.

(4) AMENDMENTS RELATED TO SECTION 1854 OF THE REFORM ACT.—

(A) Section 404(k) of the 1986 Code is amended by striking out “avoidance” in the 4th sentence and inserting in lieu thereof “evasion”.

(B) Section 409(h)(2) of the 1986 Code (relating to plan may distribute cash) is amended by striking out “section 409(o)” and inserting in lieu thereof “paragraph (1)(B)”.

(C) Subparagraph (C) of section 409(n)(3) of the 1986 Code (defining nonallocation period) is amended to read as follows:

“(C) **NONALLOCATION PERIOD.**—The term ‘nonallocation period’ means the period beginning on the date of the sale of the qualified securities and ending on the later of—

“(i) the date which is 10 years after the date of sale, or

“(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.”

(D) Subparagraph (A) of section 1042(c)(4) of the 1986 Code (defining qualified replacement property) is amended by inserting “(as in effect immediately before the Tax Reform Act of 1986)” after “section 954(c)(3)”.

(E) Clause (i) of section 1042(c)(4)(B) of the 1986 Code (relating to operating corporation) is amended by striking out “placement period” and inserting in lieu thereof “replacement period”.

(F) Section 1854(a)(3)(B) of the Reform Act is amended by striking out “1042(b)(3)” and inserting in lieu thereof “1042(b)”.

26 USC 409 note.

(G) Subparagraph (C) of section 1854(a)(3) of the Reform Act is amended to read as follows:

“(C)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to sales of securities after the date of the enactment of this Act.

“(ii) A taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subparagraph (B)) apply to sales

before the date of the enactment of this Act as if such section included the last sentence of section 409(n)(1) of the Internal Revenue Code of 1986 (as added by subparagraph (A))."

(H) Section 409(e)(5) of the 1986 Code is amended by striking out "(2) or".

(5) AMENDMENT RELATED TO SECTION 1875 OF THE REFORM ACT.—Section 1875(c)(7)(B) of the Reform Act is amended by striking out "and section 405(c)". 26 USC 404.

(6) AMENDMENT RELATED TO SECTION 1879 OF THE REFORM ACT.—Subparagraph (B) of section 125(c)(2) of the 1986 Code (relating to exception for cash and deferred arrangements) is amended by inserting "or rural electric cooperative plan (within the meaning of section 401(k)(7))" after "stock bonus plan".

(7) AMENDMENTS RELATED TO SECTION 1895 OF THE REFORM ACT.—

(A) Section 106(b)(1) of the 1986 Code (relating to exception for highly compensated individuals where plan fails to provide certain continuation coverage) is amended—

(i) by striking out "any amount contributed by an employer" and inserting in lieu thereof "any employer-provided coverage", and

(ii) by striking out "to a group" and inserting in lieu thereof "under a group".

(B) Section 1895(d)(5)(A) of the Reform Act is amended by striking out "section 162(k)(2)" and inserting in lieu thereof "section 162(k)(5)". 26 USC 162.

(8) AMENDMENTS RELATED TO SECTION 1898 OF THE REFORM ACT.—

(A) Subparagraph (G) of section 402(a)(6) of the 1986 Code (relating to treatment of potential future vesting), as added by section 1898(a)(3) of the Reform Act, is redesignated as subparagraph (I).

(B) Subparagraph (A) of section 411(a)(11) of the 1986 Code is amended by striking out "vested" and inserting in lieu thereof "nonforfeitable".

(C) Section 402(f)(1) of the 1986 Code is amended by striking out "a eligible" and inserting in lieu thereof "an eligible".

(D) Section 1899A of the Reform Act is amended by striking out paragraph (13). 26 USC 415.

(E) Subparagraph (B) of section 414(p)(4) of the 1986 Code is amended—

(i) by striking out "means earlier of" and inserting in lieu thereof "means the earlier of", and

(ii) by striking out "in" each place it appears.

(F) Section 414(p)(10) of the 1986 Code (relating to waiver of certain distribution requirements) is amended by inserting "403(b)," after "section 401".

(G) Section 414(p)(9) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies." Contracts.

ADDITIONAL CLERICAL AMENDMENTS.—

26 USC 402.

(1) Paragraph (5) of section 104(b) of the Reform Act is amended by striking out "1222(b)" and inserting in lieu thereof "1122(b)".

26 USC 274 note.

(2) The amendment made by section 122(c)(2) of the Reform Act shall be applied as if it also struck out the comma at the end of section 274(b)(1)(B) of the 1986 Code.

(3) Clause (i) of section 280F(b)(3)(B) of the 1986 Code is amended by striking out "recovery deductions" and inserting in lieu thereof "depreciation deductions".

26 USC 312.

(4) Subparagraph (A) of section 803(b)(3) of the Reform Act is amended by inserting closing quotation marks after "section 189)" and by striking out the closing quotation marks following "subparagraph (B)".

26 USC 461.

(5) Paragraph (1) of section 823(b) of the Reform Act is amended to read as follows:

"(1) Paragraph (5) of section 461(h), as amended by section 805(c)(5), is amended by striking out subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B)."

26 USC 402 note.

(6) The amendment made by section 1122(b)(2)(B)(iii) of the Reform Act shall be applied as if it struck out "Initial separate tax".

26 USC 402 note.

(7) The amendment made by section 1122(b)(2)(C) of the Reform Act shall be applied as if it did not strike out "the"

(8) Paragraph (2) of section 72(q)(2) of the 1986 Code is amended by striking out the period at the end of subparagraph (D) and inserting in lieu thereof a comma.

(9) Subparagraph (A) of section 417(e)(3) of the 1986 Code is amended by striking out "subclause (II)" and inserting in lieu thereof "clause (ii)".

(10) Subparagraph (A) of section 246(c)(1) of the 1986 Code is amended by striking out "Which" and inserting in lieu thereof "which".

(11) Subsection (a) of section 164 of the 1986 Code is amended by striking out "the GST tax" and inserting in lieu thereof "The GST tax".

26 USC 419A.

(12) Subparagraph (B) of section 1851(a)(6) of the Reform Act is amended by striking out "Subsection (b)" and inserting in lieu thereof "Subsection (a)".

26 USC 514.

(13)(A) Paragraph (1) of section 1878(e) of the Reform Act is amended by striking out "last sentence of section 514(c)(9)(B) (relating to exceptions)" and inserting in lieu thereof "second to the last sentence of section 514(c)(9)(B) (as amended by paragraph (3))".

(B) Paragraph (3) of section 1878(e) of the Reform Act is amended by striking out "is amended" and inserting in lieu thereof ", and the last sentence of such section, are amended".

(14) Paragraph (23) of section 501(c) of the 1986 Code is amended by striking out "any association" and inserting in lieu thereof "Any association".

(15) Paragraph (1) of section 501(c) of the 1986 Code is amended by striking out "any corporation organized" and inserting in lieu thereof "Any corporation organized"

(16) The table of chapters for subtitle E of the 1986 Code is amended by inserting "smokeless tobacco," after "cigarettes," in the item relating to chapter 52.

(17) Paragraph (4) of section 3321(c) of the 1986 Code is amended by adding a period at the end thereof.

- (18) Paragraph (3) of section 521(b) of the Superfund Revenue Act of 1986 is amended by striking out "Paragraph (1) of section 506(b)" and inserting in lieu thereof "Subsection (b) of section 506". 26 USC 9506.
- (19) Paragraph (2) of section 5054(a) of the 1986 Code is amended by adding a period at the end thereof.
- (20) Paragraph (3) of section 9507(b) of the 1986 Code is amended by striking out "Deep Water" each place it appears and inserting in lieu thereof "Deepwater".
- (21) Subparagraph (I) of section 231(d)(3) of the Reform Act is amended by striking out "section 6511(d)(6)" and inserting in lieu thereof "section 6511(d)(4)". 26 USC 6511.
- (22) Subsection (a) of section 1016 of the 1986 Code is amended by striking out all that follows paragraph (20) and inserting in lieu thereof the following:
- "(21) to the extent provided in section 48(q), in the case of expenditures with respect to which a credit has been allowed under section 38;
- "(22) for amounts allowed as deductions under section 59(e) relating to optional 10-year writeoff of certain tax preferences;
- "(23) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends); and
- "(24) in the case of qualified replacement property the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(d)."
- (23) Paragraph (1) of section 7518(g) of the 1986 Code is amended by striking out "not qualified withdrawal" and inserting in lieu thereof "not a qualified withdrawal".
- (24) The table of sections for part IV of subchapter P of chapter 1 of the 1986 Code is amended by striking out the item relating to section 1254 and inserting in lieu thereof the following:
- "Sec. 1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties."
- (25) Paragraph (1) of section 453(f) of the 1986 Code is amended by striking out "subsection (g)" and inserting in lieu thereof "subsections (g)".
- (26) Paragraph (8) of section 453(f) of the 1986 Code is amended by striking out "payment to be" and inserting in lieu thereof "payments to be".
- (27) Subparagraph (B) of section 668(b)(1) of the Reform Act is amended by striking out "section 856" and inserting in lieu thereof "section 858". 26 USC 858.
- (28) The second to the last sentence of section 857(b)(3)(C) of the 1986 Code is amended by striking out "such capital loss" and inserting in lieu thereof "such capital loss shall".
- (29) Subsection (a) of section 669 of the Reform Act is amended by striking out "this part" and inserting in lieu thereof "this subtitle". 26 USC 856 note.
- (30) The table of parts for subchapter M of chapter 1 of the 1986 Code is amended by adding at the end thereof the following new item:
- "Part IV. Real estate mortgage investment conduits."

(31) Subsection (c) of section 1277 of the 1986 Code is amended by inserting a closing parenthesis after “section 585(a)(2)”.

(32) The table of parts for subchapter L of chapter 1 of the 1986 Code is amended by striking out the items relating to parts II, III, and IV and inserting in lieu thereof the following:

“Part II. Other insurance companies.

“Part III. Provisions of general application.”

(33) Paragraph (7) of section 6051(a) of the 1986 Code is amended by adding a comma at the end thereof.

26 USC 501.

(34) Paragraph (14) of section 1114(b) of the Reform Act is amended—

(A) by striking out “section 501(c)(17)” and inserting in lieu thereof “section 501(c)(17)(A)”, and

(B) by striking out “duties consists” and inserting in lieu thereof “duties consist”.

(35) Subparagraph (C) of section 3121(v)(3) of the 1986 Code is amended by striking out “Saving” and inserting in lieu thereof “Savings”.

(36) Paragraph (4) of section 6652(k) of the 1986 Code is amended by striking out “or section 6678” and inserting in lieu thereof “or part II of subchapter B of this chapter”.

(37) The table of sections for part I of subchapter N of chapter 1 of the 1986 Code is amended by adding at the end thereof the following new item:

“Sec. 865. Source rules for personal property sales.”

26 USC 954 note.

(38) The amendment made by section 1221(b)(3)(B) of the Reform Act shall be construed as striking out paragraph (3) of section 954(e) of the 1986 Code.

(39) The heading of section 861(a)(6) of the 1986 Code is amended by striking out “personal property” and inserting in lieu thereof “inventory property”.

(40) Subsection (a) of section 1296 of the 1986 Code is amended by inserting a comma after “this subpart”.

(41) Subsection (b) of section 7703 of the 1986 Code is amended by striking out “section 151(e)(3)” and inserting in lieu thereof “section 151(c)(3)”.

26 USC 6601.

(42) Paragraph (3) of section 1404(c) of the Reform Act is amended by striking out “section 6601” and inserting in lieu thereof “section 6601(b)”.

(43) Subsection (a) of section 2611 of the 1986 Code is amended by striking out “mean” and inserting in lieu thereof “means”.

(44) Subparagraph (D) of section 3406(h)(5) of the 1986 Code is amended by adding a period at the end thereof.

(45) The table of sections for part III of subchapter C of chapter 76 of the 1986 Code is amended by adding at the end thereof the following new item:

“Sec. 7475. Practice fee.”

(46) The paragraph added to section 1276(b) of the 1986 Code by section 1803(a)(13)(A)(iii) of the Reform Act is amended—

(A) by inserting “(3)” before “SPECIAL” in the paragraph heading,

(B) by inserting a 1 em dash after “PAYMENTS.” in the heading, and

(C) by adding a period at the end thereof.

(47) Subparagraph (C) of section 809(d)(4) of the 1986 Code is amended by striking out “the Secretary—” and inserting in lieu thereof “The Secretary—”.

(48) Subsection (f) of section 7872 of the 1986 Code is amended by redesignating the paragraph (11) added by section 1854 of the Reform Act as paragraph (12).

(49) Paragraph (5) of section 7611(i) of the 1986 Code is amended by striking out “the title” and inserting in lieu thereof “this title”.

(50) Section 13303(a) of Public Law 99-272 is amended (in the matter proposed to be inserted in section 3306(c) of the Internal Revenue Code of 1954), effective as of the date of its enactment, by inserting a comma immediately after “1988”.

26 USC 3306
note.

(51) Subsection (f) of section 6511 of the 1986 Code is amended—

(A) by striking out “chapter 42” in the text and inserting in lieu thereof “section 4912, chapter 42,” and

(B) by striking out “CERTAIN CHAPTER 43 TAXES” in the subsection heading and inserting in lieu thereof “SIMILAR TAXES”.

(52) Section 2503(e)(2)(B) of the 1986 Code is amended by striking out “section 213(e)” and inserting in lieu thereof “section 213(d)”.

1019. EFFECTIVE DATE.

26 USC 1 note.

) GENERAL RULE.—Except as otherwise provided in this title, any amendment made by this title shall take effect as if included in the revision of the Reform Act to which such amendment relates.

) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of the 1986 Code for any period before April 16, 1989 (March 16, 1989 in the case of a taxpayer subject to section 6655 of the 1986 Code) with respect to underpayment to the extent such underpayment was created or increased by any provision of this title or title II.

TITLE II—AMENDMENTS RELATED TO TAX PROVISIONS IN OTHER LEGISLATION

2001. AMENDMENTS RELATED TO SUPERFUND REVENUE ACT OF 1986.

) AMENDMENTS RELATED TO SECTION 513 OF THE ACT.—

(1) Subsection (e) of section 4662 of the 1986 Code is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) REFUNDS DIRECTLY TO EXPORTER.—The Secretary shall provide, in regulations, the circumstances under which a credit or refund (without interest) of the tax under section 4661 shall be allowed or made to the person who exported the taxable chemical or taxable substance, where—

Regulations.

“(A) the person who paid the tax waives his claim to the amount of such credit or refund, and

“(B) the person exporting the taxable chemical or taxable substance provides such information as the Secretary may require in such regulations.”

(2) Subparagraph (A) of section 4662(b)(10) of the 1986 Code amended by striking out "a mixture of" and inserting in lieu thereof "one or more".

(b) AMENDMENTS RELATED TO SECTION 515 OF THE ACT.—

(1) Subparagraph (B) of section 4672(a)(2) of the 1986 Code amended by inserting "(or more than 50 percent of the value after "more than 50 percent of the weight)".

(2) Paragraph (2) of section 4672(a) of the 1986 Code amended by adding at the end thereof the following new sentence:

Imports.
Exports.

"If an importer or exporter of any substance requests that the Secretary determine whether such substance be listed as a taxable substance under paragraph (1) or be removed from such list, after the date the request was filed."

(3) Paragraph (4) of section 4672(a) of such Code is amended to read as follows:

"(4) MODIFICATIONS TO LIST.—The Secretary shall add to the list under paragraph (3) substances which meet either the weight or value tests of paragraph (2)(B) and may remove from such list only substances which meet neither of such tests."

(c) AMENDMENTS RELATED TO SECTION 516 OF THE ACT.—

(1) Section 59A of the 1986 Code (relating to environmental tax) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) EXCEPTION FOR RIC'S AND REIT'S.—The tax imposed by subsection (a) shall not apply to—

"(1) a regulated investment company to which part I of subchapter M applies, and

"(2) a real estate investment trust to which part II of subchapter M applies."

(2) Paragraph (1) of section 882(a) of the 1986 Code is amended by inserting "59A," after "55,".

(3)(A) Subparagraph (B) of section 56(f)(2) of the 1986 Code amended by adding at the end thereof the following new sentence: "No adjustment shall be made under this subparagraph for the tax imposed by section 59A."

(B) Paragraph (2) of section 59A(b) of the 1986 Code amended by inserting "(and the last sentence of section 56(f)(2)(B))" before the period at the end thereof.

(d) AMENDMENTS RELATED TO SECTION 521 OF THE ACT.—

(1)(A) The amendments made by subsections (b)(3) and (d) of section 10502 of the Revenue Act of 1987 shall be treated as included in the amendments made by section 521 of the Superfund Revenue Act of 1986 except that the last sentence of paragraphs (2) and (3) of section 4041(d) of the Internal Revenue Code of 1986 (as amended by such subsection (b)(3)) and reference to section 4091 of such Code in section 9508(c)(2)(A) of such Code (as amended by such subsection (d)(1)) shall not apply to sales before April 1, 1988.

(B) Paragraph (2) of section 6416(b) of the 1986 Code amended by striking out "(or under paragraph (1)(A) or (2)(A) of section 4041(a) or under paragraph (1)(A) or (2)(A) of section 4041(d) or under section 4051)" and inserting in lieu thereof "under subsection (a) or (d) of section 4041 in respect of sales under section 4051)".

26 USC 4041
note.

(2) Paragraph (3) of section 4041(c) of the 1986 Code is amended by striking out "the rate at which" and inserting in lieu thereof "the Highway Trust Fund financing rate at which".

(3)(A) Subparagraph (A) of section 4041(b)(1) of the 1986 Code is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a) or (d)(1)".

(B) Subparagraph (B) of section 4041(b)(1) of the 1986 Code is amended by inserting before the period "and by the corresponding provision of subsection (d)(1)".

(C) Subsection (b) of section 4041 of the 1986 Code is amended by striking out paragraph (3).

(D) Subparagraph (A) of section 4041(b)(2) of the 1986 Code is amended to read as follows:

"(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel—

"(i) subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents', and

"(ii) subsection (d)(1) shall be applied by substituting '0.05 cent' for '0.1 cent' with respect to the sales and uses to which clause (i) applies."

(E) Subsection (f) of section 6421 of the 1986 Code is amended by striking out all that follows paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(2) GASOLINE USED IN AVIATION.—This section shall not apply in respect of gasoline which is used as a fuel in an aircraft—

"(A) in noncommercial aviation (as defined in section 4041(c)(4)), or

"(B) in aviation which is not noncommercial aviation (as so defined) with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

"(3) LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX ON GASOLINE USED IN TRAINS.—This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used as a fuel in a train."

(F) The second sentence of section 6421(a) of the 1986 Code is amended by striking out "paragraph (3) of subsection (e)" and inserting in lieu thereof "paragraph (2) of subsection (f)".

(4)(A) Paragraph (1) of section 1703(f) of the Reform Act (relating to floor stock taxes) is amended by striking out "9 cents" and inserting in lieu thereof "9.1 cents".

(B) Paragraph (4) of section 1703(f) of the Reform Act is amended to read as follows:

"(4) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this section shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

"(A) at the Highway Trust Fund financing rate under such section to the extent of 9 cents per gallon, and

"(B) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cent per gallon."

(5)(A) Paragraph (1) of section 4081(c) of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by

26 USC 4081
note.

inserting “and by substituting ‘ $\frac{1}{9}$ cent’ for ‘0.1 cent’” before “in the case of the removal”.

(B) The last sentence of section 4081(c)(2) of the 1986 Code, as amended by such section 1703, is amended by striking out “5 $\frac{1}{2}$ cents a gallon” and inserting in lieu thereof “reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or sale of such fuel”.

(6)(A) Paragraph (1) of section 4091(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“In the case of a sale described in subparagraph (B), the Leaking Underground Storage Tank Trust Fund financing rate shall be $\frac{1}{9}$ cent per gallon.”

(B) Paragraph (4) of section 4091(b) of the 1986 Code is amended by inserting “except as provided in subsection (c),” after “paragraph (1),”.

(C) The last sentence of section 4091(c)(2) of the 1986 Code is amended by striking out “5 cents a gallon” and inserting in lieu thereof “reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel”.

(D) The amendments made by this paragraph shall take effect as if included in the amendments made by section 10502 of the Revenue Act of 1987.

(7)(A) The amendment made by section 10502(c)(4) of the Revenue Act of 1987 shall be treated as if included in the amendments made by section 1703 of the Reform Act except that references to section 4091 of the Internal Revenue Code of 1986 shall not apply to sales before April 1, 1988.

(B) Subparagraph (A) of section 6427(f)(1) of the 1986 Code is amended—

(i) by striking out “regular Highway Trust Fund financing rate” each place it appears and inserting in lieu thereof “regular tax rate”, and

(ii) by striking out “incentive Highway Trust Fund financing rate” and inserting in lieu thereof “incentive tax rate”.

(C) Subparagraph (B) of section 6427(g)(1) of the 1986 Code is amended to read as follows:

“(B) DEFINITIONS.—For purposes of subparagraph (A)—
“(i) REGULAR TAX RATE.—The term ‘regular tax rate’ means—

“(I) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof, and

“(II) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof.

“(ii) INCENTIVE TAX RATE.—The term ‘incentive tax rate’ means—

“(I) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof, and

“(II) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof.”

(D) Paragraph (2) of section 6427(l) of the 1986 Code is amended by inserting “under section 4041” after “exempt”.

Effective date.

26 USC 4091
note.

26 USC 6427
note.

(E) The amendments made by this paragraph shall take effect as if included in the amendments made by section 10502 of the Revenue Act of 1987.

Effective date.
26 USC 6427
note.

EFFECTIVE DATE.—Except as otherwise provided in this section, amendments made by this section shall take effect as if included in the provision of the Superfund Revenue Act of 1986 to which it relates.

26 USC 56 note.

2002. AMENDMENTS RELATED TO HARBOR MAINTENANCE REVENUE ACT OF 1986.

ORDER OF ENACTMENTS.—

(1) For purposes of section 4042 of the 1986 Code, the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 shall be treated as enacted after the amendment made by section 1404(a) of the Harbor Maintenance Revenue Act of 1986.

26 USC 4042
note.

(2) Paragraph (2) of section 4042(b) of the 1986 Code is amended to read as follows:

“(2) **RATES.**—For purposes of paragraph (1)—

“(A) The Inland Waterways Trust Fund financing rate is the rate determined in accordance with the following table:

If the use occurs:	The tax per gallon is:
Before 1990.....	10 cents
During 1990.....	11 cents
During 1991.....	13 cents
During 1992.....	15 cents
During 1993.....	17 cents
During 1994.....	19 cents
After 1994.....	20 cents.

“(B) The Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.”

CARGO TRANSPORTED BETWEEN POSSESSIONS, ETC.—Subparagraph (B) of section 4462(b)(1) of the 1986 Code is amended to read as follows:

“(B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a possession for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession.”

DELAY IN DUE DATE FOR STUDY OF CARGO DIVERSION.—Section of the Harbor Maintenance Revenue Act of 1986 is amended by striking out “1 year from the date of the enactment of this Act” and inserting in lieu thereof “December 1, 1988”.

26 USC 4461
note.

EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provision of the Harbor Maintenance Revenue Act of 1986 to which it relates.

26 USC 4042
note.

2003. AMENDMENTS RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1986.

AMENDMENT RELATED TO SECTION 1011 OF THE ACT.—

(1) Subparagraph (B) of section 501(c)(12) of the 1986 Code is amended by striking out “or” at the end of clause (ii), by striking out the period at the end of clause (iii), and inserting in lieu thereof “, or”, and by adding at the end thereof the following new clause:

“(iv) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).”

(2) Subparagraph (C) of section 501(c)(12) of the 1986 Code is amended to read as follows:

“(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

“(i) from qualified pole rentals, or

“(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).”

26 USC 501 note.

(3) The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

(b) AMENDMENTS RELATED TO SECTION 8011 OF THE ACT.—

(1) The following provisions of the 1986 Code are each amended by striking out “the 14th day after the date on which” and inserting in lieu thereof “the 14th day after the last day of the semimonthly period during which”:

(A) Subparagraphs (A) and (B) of section 5061(d)(2).

(B) Paragraph (3) of section 5061(d).

(C) Clauses (i) and (ii) of section 5703(b)(2)(B).

(D) Subparagraph (C) of section 5703(b)(2).

Effective date.

26 USC 5061
note.

(2) The amendments made by paragraph (1) shall take effect as if included in the amendments made by section 8011 of the Omnibus Budget Reconciliation Act of 1986.

(c) AMENDMENT RELATED TO SECTION 8041 OF THE ACT.—

(1) IN GENERAL.—Paragraph (3) of section 901(j) of the 1986 Code is amended—

(A) by striking out “Section 275” and inserting in lieu thereof “Sections 275 and 78”, and

(B) by inserting “, Etc.” after “DEDUCTION” in the paragraph heading.

26 USC 901 note.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 1987.

(d) AMENDMENT RELATED TO SECTION 9002 OF THE ACT.—Paragraph (3) of section 3509(d) of the 1986 Code is amended by striking out “subsection (d)(3)” and inserting in lieu thereof “subsection (d)(4)”.

SEC. 2004. AMENDMENTS RELATED TO THE REVENUE ACT OF 1987.

26 USC 21 note.

(a) AMENDMENT RELATED TO SECTION 10101 OF THE ACT.—Section 10101(b) of the Revenue Act of 1987 is amended to read as follows:

“(b) EFFECTIVE DATE.—

“(1) IN GENERAL.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

“(2) SPECIAL RULE FOR CAFETERIA PLANS.—For purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight.”

(b) AMENDMENTS RELATED TO SECTION 10102 OF THE ACT.—

(1) Subsection (h) of section 163 of the 1986 Code is amended by redesignating paragraph (6) as paragraph (5).

(2) Clause (ii) of section 56(b)(1)(C) of the 1986 Code is amended by striking out "163(h)(6)" and inserting in lieu thereof "163(h)(5)".

(3) Paragraph (1) of section 56(e) of the 1986 Code is amended—

(A) by striking out "substantially rehabilitating" and inserting in lieu thereof "substantially improving", and

(B) by striking out "or is paid" in subparagraph (A).

(c) AMENDMENT RELATED TO SECTION 10103.—Paragraph (1) of section 10103(a) of the Revenue Act of 1987 is amended by inserting "in a plan established for its employees by the United States" after "participant".

26 USC 219 note.

(d) AMENDMENTS RELATED TO SECTION 10202 OF THE ACT.—

(1) Subparagraph (A) of section 453(l)(1) of the 1986 Code, is amended by striking out "disposes of personal property" and inserting in lieu thereof "disposes of personal property of the same type".

(2) Section 453A of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations—

"(1) disallowing the use of the installment method in whole or in part for transactions in which the rules of this section otherwise would be avoided through the use of related persons, pass-thru entities, or intermediaries, and

"(2) providing that the sale of an interest in a partnership or other pass-thru entity will be treated as a sale of the proportionate share of the assets of the partnership or other entity."

(3) Paragraph (3) of section 10202(e) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

26 USC 453 note.

"(C) CERTAIN DISPOSITIONS DEEMED MADE ON 1ST DAY OF TAXABLE YEAR.—If the taxpayer makes an election under subparagraph (A), in the case of the taxpayer's 1st taxable year ending after December 31, 1986—

"(i) dispositions after August 16, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day, and

"(ii) subsections (b)(2)(B) and (c)(4) of section 453A of such Code shall be applied separately with respect to such dispositions by substituting for '\$5,000,000' the amount which bears the same ratio to \$5,000,000 as the number of days after August 16, 1986, and before such 1st day bears to 365."

(4) Paragraph (2) of section 10202(e) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

"(C) CERTAIN RULES MADE APPLICABLE.—For purposes of this paragraph, rules similar to the rules of paragraphs (4) and (5) of section 812(c) of the Tax Reform Act of 1986 (as added by the Technical and Miscellaneous Revenue Act of 1988) shall apply."

(5) Subsection (k) of section 453 of the 1986 Code is amended by striking out "and section 453A".

26 USC 453
note.

(6) Subparagraph (A) of section 10202(e)(2) of the Revenue Act of 1987 is amended by striking out "section 453A of the Internal Revenue Code of 1986" and inserting in lieu thereof "section 4531(1) of the Internal Revenue Code of 1986 as added by this section".

(7) Paragraph (2) of section 453A(b) of the 1986 Code is amended by striking out "for purposes of this paragraph" and inserting in lieu thereof "for purposes of this paragraph and subsection (c)(4)".

(8) Paragraph (3) of section 453A(b) of the 1986 Code is amended to read as follows:

"(3) EXCEPTION FOR FARM PROPERTY.—An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e) (4) or (5))."

(e) AMENDMENTS RELATED TO SECTION 10206 OF THE ACT.—

(1)(A) Subsection (a) of section 444 of the 1986 Code is amended by striking out "as provided in subsections (b) and (c)" and inserting in lieu thereof "as otherwise provided in this section".

(B) Paragraph (3) of section 444(d) of the 1986 Code is amended to read as follows:

"(3) TIERED STRUCTURES, ETC.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph—

"(i) no election may be under subsection (a) with respect to any entity which is part of a tiered structure and

"(ii) an election under subsection (a) with respect to any entity shall be terminated if such entity becomes part of a tiered structure.

"(B) EXCEPTIONS FOR STRUCTURES CONSISTING OF CERTAIN ENTITIES WITH SAME TAXABLE YEAR.—Subparagraph (A) shall not apply to any tiered structure which consists only of partnerships or S corporations (or both) all of which have the same taxable year."

(C) Subparagraph (B) of section 444(d)(2) of the 1986 Code is amended by striking out "under subparagraph (A)" and inserting in lieu thereof "under subparagraph (A) or paragraph (3)(A)".

(2)(A) Section 444 of the 1986 Code is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:

"(f) PERSONAL SERVICE CORPORATION.—For purposes of this section, the term 'personal service corporation' has the meaning given to such term by section 441(i)(2)."

(B) Subsection (f) of section 280H of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) PERSONAL SERVICE CORPORATION.—The term 'personal service corporation' has the meaning given to such term by section 441(i)(2)."

(3) Paragraph (2) of section 280H(f) of the 1986 Code is amended by striking out "section 296A(b)(2)" and inserting in lieu thereof "section 269A(b)(2) (as modified by section 441(i)(2))".

(4)(A) Paragraph (2) of section 7519(b) of the 1986 Code is amended to read as follows:

“(2) the net required payment balance.”

(B) Subsection (e) of section 7519 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) NET REQUIRED PAYMENT BALANCE.—The term ‘net required payment balance’ means the excess (if any) of—

“(A) the aggregate of the required payments under this section for all preceding applicable election years, over

“(B) the aggregate amount allowable as a refund to the entity under subsection (c) for all preceding applicable election years.”

(5) Subsection (c) of section 7519 of the 1986 Code is amended to read as follows:

“(A) REFUND OF PAYMENTS.—

“(1) IN GENERAL.—If, for any applicable election year, the amount determined under subsection (b)(2) exceeds the amount determined under subsection (b)(1), the entity shall be entitled to a refund of such excess for such year.

“(2) TERMINATION OF ELECTIONS, ETC.—If—

“(A) an election under section 444 is terminated effective with respect to any year, or

“(B) the entity is liquidated during any year, the entity shall be entitled to a refund of the net required payment balance.

“(3) DATE ON WHICH REFUND PAYABLE.—Any refund under this subsection shall be payable on later of—

“(A) April 15 of the calendar year following—

“(i) in the case of the year referred to in paragraph

(1), the calendar year in which it begins,

“(ii) in the case of the year referred to in paragraph

(2), the calendar year in which it ends, or

“(B) the day 90 days after the day on which claim therefor is filed with the Secretary.”

(6) Subsection (g) of section 7519 of the 1986 Code is amended by striking out “including regulations” and all that follows down through the period at the end thereof and inserting in lieu thereof

“including regulations providing for appropriate adjustments in the application of this section and sections 280H and 444 in cases

re—

“(1) 2 or more applicable election years begin in the same calendar year, or

“(2) the base year is a taxable year of less than 12 months.”

(7) Subparagraph (B) of section 7519(d)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: “(and such corporation shall be treated as an S corporation for such taxable year for purposes of paragraph 3))”.

(8) Subsection (d) of section 7519 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) TREATMENT OF GUARANTEED PAYMENTS.—

“(A) IN GENERAL.—Any guaranteed payment by a partnership shall not be treated as an applicable payment, and the amount of the net income of the partnership shall be determined by not taking such guaranteed payment into account.

“(B) **GUARANTEED PAYMENT.**—For purposes of subparagraph (A), the term ‘guaranteed payment’ means any payment referred to in section 707(c).”

(9) Paragraph (4) of section 7519(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: “Notwithstanding the preceding provisions of this paragraph, for taxable years beginning after 1987, the applicable percentage for any partnership or S corporation shall be 100 percent if more than 50 percent of such entity’s net income for the short taxable year which would have resulted if the entity had not made an election under section 444 would have been allocated to partners or shareholders who would not have been entitled to the benefits of section 806(e)(2)(C) of the Tax Reform Act of 1986 with respect to such income.”

(10) Subparagraphs (A) and (B) of section 7519(d)(2) of the 1986 Code are each amended by striking out “(other than credits)” and inserting in lieu thereof “(other than credits and tax-exempt income)”.

26 USC 444 note.

(11) Paragraph (4) of section 10206(d) of the Revenue Act of 1987 is amended by adding at the end thereof the following new sentence: “The preceding sentence shall apply only in the case of an election under section 444 of such Code made for a taxable year beginning before 1989.”

(12) Subparagraph (A) of section 444(d)(2) of the 1986 Code is amended by inserting “or otherwise terminates such election” before the period at the end of the first sentence thereof.

(13) Paragraph (4) of section 444(b) of the 1986 Code is amended by striking out “the term” and inserting in lieu thereof “except as provided in regulations, the term”.

(14)(A) Paragraph (4) of section 280H(f) of the 1986 Code is amended to read as follows:

“(4) **ADJUSTED TAXABLE INCOME.**—The term ‘adjusted taxable income’ means taxable income determined without regard to—

“(A) any amount paid to an employee-owner which is includible in the gross income of such employee-owner, and

“(B) any net operating loss carryover to the extent such carryover is attributable to amounts described in subparagraph (A).”

(B) Subparagraph (A) of section 7519(d)(3) of the 1986 Code is amended by striking out “or incurred”.

(C) Subsections (c)(1)(A)(i) and (d)(1) of section 280H of the 1986 Code are each amended by striking out “or incurred”.

(f) **AMENDMENTS RELATED TO SECTION 10211 OF THE ACT.**—

(1) Paragraph (4) of section 7704(e) of the 1986 Code is amended by striking out “as may be required” and inserting in lieu thereof “or to pay such amounts as may be required”.

(2) Paragraph (2) of section 10211(c) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

“(C) **COORDINATION WITH PASSIVE-TYPE INCOME REQUIREMENTS.**—In the case of an existing partnership, paragraph

(1) of section 7704(c) of the Internal Revenue Code of 1986 (as added by this section) shall be applied by substituting for ‘December 31, 1987’ the earlier of—

“(i) December 31, 1997, or

26 USC 7704
note.

“(ii) the day (if any) as of which such partnership ceases to be treated as an existing partnership by reason of subparagraph (B).”

(3) Paragraph (1) of section 7704(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: “For purposes of the preceding sentence, a partnership shall not be treated as being in existence during any period before the 1st taxable year in which such partnership (or a predecessor) was a publicly traded partnership.”

(4) Paragraph (1) of section 7704(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: “For purposes of subparagraph (E), the term ‘mineral or natural resource’ means any product of a character with respect to which a deduction for depletion is allowable under section 611; except that such term shall not include any product described in subparagraph (A) or (B) of section 613(b)(7).”

(5) Paragraph (3) of section 7704(d) of the 1986 Code is amended to read as follows:

“(3) **REAL PROPERTY RENT.**—The term ‘real property rent’ means amounts which would qualify as rent from real property under section 856(d) if—

“(A) such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements), and

“(B) stock owned, directly or indirectly, by or for a partner would not be considered as owned under section 318(a)(3)(A) by the partnership unless 5 percent or more (by value) of the interests in such partnership are owned, directly or indirectly, by or for such partner.”

AMENDMENT RELATED TO SECTION 10212 OF THE ACT.—Subsection (k) of section 469 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) **COORDINATION WITH SUBSECTION (g).**—For purposes of subsection (g), a taxpayer shall not be treated as having disposed of his entire interest in an activity of a publicly traded partnership until he disposes of his entire interest in such partnership.”

AMENDMENTS RELATED TO SECTION 10214 OF THE ACT.—

(1) Subparagraph (E) of section 514(c)(9) of the 1986 Code is amended by adding at the end thereof the following new clause:

“(iii) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations which may provide for exclusion or segregation of items.”

(2) Clause (i) of section 514(c)(9)(E) of the 1986 Code is amended by striking out subclause (I) and by redesignating subclauses (II) and (III) as subclauses (I) and (II), respectively.

AMENDMENTS RELATED TO SECTION 10221 OF THE ACT.—

(1) Paragraph (2) of section 10221(e) of the Revenue Act of 1987 is amended by striking out “amendments made by subsection (b)” and inserting in lieu thereof “amendments made by subsection (c)”.

(2) Subsection (b) of section 244 of the 1986 Code is amended by striking out “section 243(c)(4)” and inserting in lieu thereof “section 243(d)(4)”.

AMENDMENTS RELATED TO SECTION 10222 OF THE ACT.—

(1)(A) Paragraph (1) of section 1503(e) of the 1986 Code is amended by striking out so much of such paragraph as precedes subparagraph (A) thereof and inserting in lieu thereof the following:

“(1) **IN GENERAL.**—Solely for purposes of determining gain or loss on the disposition of intragroup stock and the amount of any inclusion by reason of an excess loss account, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year (and in determining the amount in such account)—”

26 USC 1503
note.

(B) Paragraph (2) of section 10222(a) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

“(C) **TREATMENT OF CERTAIN EXCESS LOSS ACCOUNTS.**—

“(i) **IN GENERAL.**—If—

“(I) any disposition on or before December 15, 1987, of stock resulted in an inclusion of an excess loss account (or would have so resulted if the amendments made by paragraph (1) had applied to such disposition), and

“(II) there is an unrecaptured amount with respect to such disposition,
the portion of such unrecaptured amount allocable to stock disposed of in a disposition to which the amendment made by paragraph (1) applies shall be taken into account as negative basis. To the extent permitted by the Secretary of the Treasury or his delegate, the preceding sentence shall not apply to the extent the taxpayer elects to reduce its basis in indebtedness of the corporation with respect to which there would have been an excess loss account.

“(ii) **SPECIAL RULES.**—For purposes of this subparagraph—

“(I) **UNRECAPTURED AMOUNT.**—The term ‘unrecaptured amount’ means the amount by which the inclusion referred to in clause (i)(I) would have been increased if the amendment made by paragraph (1) and applied to the disposition.

“(II) **COORDINATION WITH BINDING CONTRACT EXCEPTION.**—A disposition shall be treated as occurring on or before December 15, 1987, if the amendment made by paragraph (1) does not apply to such disposition by reason of subparagraph (B).”

(2) Subsection (e) of section 1503 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) **ADJUSTMENTS.**—Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of paragraph (1)—

“(A) in the case of any property acquired by the corporation before consolidation, for the difference between the adjusted basis of such property for purposes of computing taxable income and its adjusted basis for purposes of computing earnings and profits, and

“(B) in the case of any property, for any basis adjustment under section 48(q).”

(3)(A) Paragraph (2) of section 1503(e) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) APPLICATION OF SECTION 312(n) (7) NOT AFFECTED.—

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.”

(B) Subsection (e) of section 301 of the 1986 Code (as redesignated by section 106(e)(12) of this Act) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) APPLICATION OF SECTION 312(n) (7) NOT AFFECTED.—The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.”

(4) Subparagraph (B) of section 10222(b)(2) of the Revenue Act of 1987 is amended to read as follows:

26 USC 301 note.

“(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply for purposes of determining gain or loss on any disposition of stock after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.”

AMENDMENTS RELATED TO SECTION 10223 OF THE ACT.—

(1) Subparagraph (D) of section 355(b)(2) of the 1986 Code is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

“(i) was not acquired by any distributee corporation directly (or through 1 or more corporations, whether through the distributing corporation or otherwise) within the period described in subparagraph (B) and was not acquired by the distributing corporation directly (or through 1 or more corporations) within such period, or

“(ii) was so acquired by any such corporation within such period, but, in each case in which such control was so acquired, it was so acquired, only by reason of transactions in which gain or loss was not recognized in whole or in part, or only by reason of such transactions combined with acquisitions before the beginning of such period.”

(2) Subparagraph (A) of section 304(b)(4) of the 1986 Code is amended by striking out “stock of 1 member” and inserting in lieu thereof “stock from 1 member”.

(3) Paragraph (2) of section 10223(d) of the Revenue Act of 1987 is amended by adding at the end thereof the following new subparagraph:

26 USC 304 note.

“(D) TREATMENT OF CERTAIN MEMBERS OF AFFILIATED GROUP.—

“(i) IN GENERAL.—For purposes of subparagraph (A), all corporations which were in existence on the designated date and were members of the same affiliated group which included the distributees on such date shall be treated as 1 distributee.

“(ii) LIMITATION TO STOCK HELD ON DESIGNATED DATE.—Clause (i) shall not exempt any distribution

from the amendments made by this section if such distribution is with respect to stock not held by the distributee (determined without regard to clause (i)) on the designated date directly or indirectly through a corporation which goes out of existence in the transaction.

“(iii) **DESIGNATED DATE.**—For purposes of this subparagraph, the term ‘designated date’ means the later of—

“(I) December 15, 1987, or

“(II) the date on which the acquisition meeting the requirements of subparagraph (A) occurred.”

(4) Subparagraph (B) of section 10223(d)(2) of the Revenue Act of 1987 is amended—

(A) by striking out “before January 1, 1993” and inserting in lieu thereof “on or before March 31, 1988”, and

(B) by striking out “before January 1, 1989”.

(I) **AMENDMENT RELATED TO SECTION 10224 OF THE ACT.**—Sections 1201(a) and 1561(a) of the 1986 Code, and section 904(b)(3)(D)(ii) of the 1986 Code (as amended by section 106(b)(2) of this Act), are each amended by striking out “section 11(b)” and inserting in lieu thereof “section 11(b)(1)”.

(m) **AMENDMENTS RELATED TO SECTION 10226 OF THE ACT.**—

(1)(A) Subsection (a) of section 384 of the 1986 Code is amended to read as follows:

“(a) **GENERAL RULE.**—If—

“(1)(A) a corporation acquires directly (or through 1 or more other corporations) control of another corporation, or

“(B) the assets of a corporation are acquired by another corporation in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

“(2) either of such corporations is a gain corporation, income for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss (other than a preacquisition loss of the gain corporation).”

(B) Subsection (c) of section 384 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (8) and by inserting after paragraph (3) the following new paragraphs:

“(4) **GAIN CORPORATION.**—The term ‘gain corporation’ means any corporation with a net unrealized built-in gain.

“(5) **CONTROL.**—The term ‘control’ means ownership of stock in a corporation which meets the requirements of section 1504(a)(2).

“(6) **TREATMENT OF MEMBERS OF SAME GROUP.**—Except as provided in regulations and except for purposes of subsection (b), all corporations which are members of the same affiliated group immediately before the acquisition date shall be treated as 1 corporation. To the extent provided in regulations, section 1504 shall be applied without regard to subsection (b) thereof for purposes of the preceding sentence.

“(7) **TREATMENT OF PREDECESSORS AND SUCCESSORS.**—Any reference in this section to a corporation shall include a reference to any predecessor or successor thereof.”

(C) Paragraph (2) of section 384(c) of the 1986 Code is amended to read as follows:

“(2) **ACQUISITION DATE.**—The term ‘acquisition date’ means

“(A) in any case described in subsection (a)(1)(A), the date on which the acquisition of control occurs, or

“(B) in any case described in subsection (a)(1)(B), the date of the transfer in the reorganization.”

(D) Paragraph (1) of section 384(c) of the 1986 Code is amended by striking out “subsection (a)(2)” and inserting in lieu thereof “subsection (a)(1)(B)”.

(2) Paragraph (2) of section 384(e) of the 1986 Code is amended by striking out “the gain corporation” and inserting in lieu thereof “a corporation”.

(3) Subsection (b) of section 384 of the 1986 Code is amended to read as follows:

(b) EXCEPTION WHERE CORPORATIONS UNDER COMMON CONTROL.—

“(1) IN GENERAL.—Subsection (a) shall not apply to the preacquisition loss of any corporation if such corporation and the gain corporation were members of the same controlled group at all times during the 5-year period ending on the acquisition date.

“(2) CONTROLLED GROUP.—For purposes of this subsection, the term ‘controlled group’ means a controlled group of corporations (as defined in section 1563(a)); except that—

“(A) ‘more than 50 percent’ shall be substituted for ‘at least 80 percent’ each place it appears,

“(B) the ownership requirements of section 1563(a) must be met both with respect to voting power and value, and

“(C) the determination shall be made without regard to subsection (a)(4) of section 1563.

“(3) SHORTER PERIOD WHERE CORPORATIONS NOT IN EXISTENCE FOR 5 YEARS.—If either of the corporations referred to in paragraph (1) was not in existence throughout the 5-year period referred to in paragraph (1), the period during which such corporation was in existence (or if both, the shorter of such periods) shall be substituted for such 5-year period.”

(4) Section 384 of the 1986 Code is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

(e) ORDERING RULES FOR NET OPERATING LOSSES, ETC.—

“(1) CARRYOVER RULES.—If any preacquisition loss may not offset a recognized build-in gain by reason of this section, such gain shall not be taken into account in determining under section 172(b)(2) the amount of such loss which may be carried to other taxable years. A similar rule shall apply in the case of any excess credit or net capital loss limited by reason of subsection (d).

“(2) ORDERING RULE FOR LOSSES CARRIED FROM SAME TAXABLE YEAR.—In any case in which—

“(A) a preacquisition loss for any taxable year is subject to limitation under subsection (a), and

“(B) a net operating loss from such taxable year is not subject to such limitation,

taxable income shall be treated as having been offset 1st by the loss subject to such limitation.”

(5) In any case where the acquisition date (as defined in section 384(c)(2) of the 1986 Code as amended by this subsection) is before March 31, 1988, the acquiring corporation may elect to have the amendments made by this subsection not apply. Such an election shall be made in such manner as the Secretary of

from the amendments made by this section if such distribution is with respect to stock not held by the distributee (determined without regard to clause (i)) on the designated date directly or indirectly through a corporation which goes out of existence in the transaction.

“(iii) **DESIGNATED DATE.**—For purposes of this subparagraph, the term ‘designated date’ means the later of—

“(I) December 15, 1987, or

“(II) the date on which the acquisition meeting the requirements of subparagraph (A) occurred.”

(4) Subparagraph (B) of section 10223(d)(2) of the Revenue Act of 1987 is amended—

(A) by striking out “before January 1, 1993” and inserting in lieu thereof “on or before March 31, 1988”, and

(B) by striking out “before January 1, 1989,”.

(l) **AMENDMENT RELATED TO SECTION 10224 OF THE ACT.**—Sections 1201(a) and 1561(a) of the 1986 Code, and section 904(b)(3)(D)(ii) of the 1986 Code (as amended by section 106(b)(2) of this Act), are each amended by striking out “section 11(b)” and inserting in lieu thereof “section 11(b)(1)”.

(m) **AMENDMENTS RELATED TO SECTION 10226 OF THE ACT.**—

(1)(A) Subsection (a) of section 384 of the 1986 Code is amended to read as follows:

“(a) **GENERAL RULE.**—If—

“(1)(A) a corporation acquires directly (or through 1 or more other corporations) control of another corporation, or

“(B) the assets of a corporation are acquired by another corporation in a reorganization described in subparagraph (A), (C), or (D) of section 368(a)(1), and

“(2) either of such corporations is a gain corporation, income for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss (other than a preacquisition loss of the gain corporation).”

(B) Subsection (c) of section 384 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (8) and by inserting after paragraph (3) the following new paragraphs:

“(4) **GAIN CORPORATION.**—The term ‘gain corporation’ means any corporation with a net unrealized built-in gain.

“(5) **CONTROL.**—The term ‘control’ means ownership of stock in a corporation which meets the requirements of section 1504(a)(2).

“(6) **TREATMENT OF MEMBERS OF SAME GROUP.**—Except as provided in regulations and except for purposes of subsection (b), all corporations which are members of the same affiliated group immediately before the acquisition date shall be treated as 1 corporation. To the extent provided in regulations, section 1504 shall be applied without regard to subsection (b) thereof for purposes of the preceding sentence.

“(7) **TREATMENT OF PREDECESSORS AND SUCCESSORS.**—Any reference in this section to a corporation shall include a reference to any predecessor or successor thereof.”

(C) Paragraph (2) of section 384(c) of the 1986 Code is amended to read as follows:

“(2) **ACQUISITION DATE.**—The term ‘acquisition date’ means

the Treasury or his delegate shall prescribe and shall be made not later than the later of the due date (including extension) for filing the return for the taxable year of the acquiring corporation in which the acquisition date occurs or the date 180 days after the date of the enactment of this Act. Such election, once made, shall be irrevocable.

(n) AMENDMENTS RELATED TO SECTION 10227 OF THE ACT.—Paragraph (4) of section 1363(d) of the 1986 Code (relating to recapture of LIFO benefits) is amended by adding at the end thereof the following new subparagraph:

“(D) NOT TREATED AS MEMBER OF AFFILIATED GROUP.—Except as provided in regulations, the corporation referred to in paragraph (1) shall not be treated as a member of an affiliated group with respect to the amount included in its gross income under paragraph (1).”

(o) AMENDMENTS RELATED TO SECTION 10228 OF THE ACT.—

(1)(A) Subsection (a) of section 5881 of the 1986 Code is amended by striking out “gain realized by such person on such receipt” and inserting in lieu thereof “gain or other income realized by such person by reason of such receipt”.

(B)(i) Subsection (b) of section 5881 of the 1986 Code is amended by striking out “a corporation to directly or indirectly acquire its stock” and inserting in lieu thereof “a corporation or any person acting in concert with such corporation) to directly or indirectly acquire stock of such corporation”.

26 USC 5881
note.

(ii) The amendment made by clause (i) shall apply to transactions occurring on or after March 31, 1988.

(C) Subsection (d) of section 5881 of the 1986 Code is amended—

(i) by striking out “the gain” and inserting in lieu thereof “the gain or other income”, and

(ii) by striking out “GAIN RECOGNIZED” in the subsection heading and inserting in lieu thereof “AMOUNT RECOGNIZED”.

(2) Section 5881 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(e) ADMINISTRATIVE PROVISIONS.—For purposes of the deficiency procedures of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.”

(p) AMENDMENTS RELATED TO SECTION 10241 OF THE ACT.—

(1) Paragraph (1) of section 811(d) of the 1986 Code is amended by striking out “the prevailing State assumed interest rate under the contract” and inserting in lieu thereof “the greater of the prevailing State assumed interest rate or applicable Federal interest rate in effect under section 807 for the contract”.

(2) Paragraph (2) of section 812(b) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following:

“In any case where neither the prevailing State assumed interest rate nor the applicable Federal interest rate is used, another appropriate rate shall be used for purposes of subparagraph (A).”

(q) AMENDMENTS RELATED TO SECTION 10242 OF THE ACT.—

(1) Subsection (h) of section 816 of the 1986 Code is amended by striking out “section 842(c)(1)(A)” and inserting in lieu thereof “section 842(b)(2)(B)(i)”.

(2)(A) Subparagraph (B) of section 842(b)(3) of the 1986 Code is amended by striking out “held for the production of such income”.

(B) Subparagraph (B) of section 842(b)(4) of the 1986 Code is amended by striking out “held for the production of investment income”.

(3) Subparagraph (d) of section 842 of the 1986 Code is amended by striking out “and” at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new paragraph:

“(4) which may provide that, in the case of companies taxable under part II of this subchapter, determinations under subsection (b) will be made separately for categories of such companies established in such regulations.”

(r) AMENDMENT RELATED TO SECTION 10301 OF THE ACT.—Paragraph (3) of section 6655(g) of the 1986 Code is amended by striking the sentence following subparagraph (C) and inserting in lieu thereof the following:

“In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting ‘5th month’ for ‘3rd month’, and subsection (e)(2)(A) shall be applied by substituting ‘2 months’ for ‘3 months’ and in clause (i)(I), by substituting ‘4 months’ for ‘5 months’ in clause (i)(II), by substituting ‘7 months’ for ‘8 months’ in clause (i)(III), and by substituting ‘10 months’ for ‘11 months’ in clause (i)(IV)”.

(s) AMENDMENTS RELATED TO SECTION 10502 OF THE ACT.—

(1) Section 4093 of the 1986 Code is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

“(d) CERTAIN AVIATION FUEL SALES.—Under regulations prescribed by the Secretary, the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use or used as supplies for vessels or aircraft within the meaning of section 4221(d)(3)).”

(2) Subparagraph (B) of section 6427(l)(3) of the 1986 Code (relating to no refund of Leaking Underground Storage Tank Trust Fund financing tax) is amended by inserting “(except as supplies for vessels or aircraft within the meaning of section 4221(d)(3))” after “aircraft”.

(3) Section 6427 of the 1986 Code is amended by redesignating the subsection (p) relating to gasoline used in noncommercial aviation during period rate reduction in effect and subsection (q) (relating to cross references) as subsections (q) and (r), respectively.

(t) AMENDMENTS RELATED TO SECTION 10512 OF THE ACT.—

(1) Section 5276 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(c) EXCEPTION FOR UNITED STATES.—Subsection (a) shall not apply to any permit issued to an agency or instrumentality of the United States.”

(2) Subsection (a) of section 5113 of the 1986 Code is amended—

(A) by inserting “taxpaid wine bottling house,” after “bonded wine cellar,” each place it appears, and

(B) by striking out “DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, OR BREWERIES” in the heading and inserting in lieu thereof “CONTROLLED PREMISES”.

(3) Section 5123 of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) COORDINATION OF TAXES UNDER SECTION 5121.—No tax shall be imposed by section 5121(a) with respect to a person’s activities at any place during a year if such person has paid the tax imposed by section 5121(b) with respect to such place for such year.”

(4) Section 5113 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(g) COORDINATION OF TAXES UNDER SECTION 5111.—No tax shall be imposed by section 5111(a) with respect to a person’s activities at any place during a year if such person has paid the tax imposed by section 5111(b) with respect to such place for such year.”

26 USC 56 note.

(u) EFFECTIVE DATE.—Except as otherwise provided in this section, any amendment made by this section shall take effect as if included in the provisions of the Revenue Act of 1987 to which such amendment relates.

SEC. 2005. AMENDMENTS RELATED TO PENSION PROTECTION ACT AND FULL FUNDING LIMITATIONS.

(a) AMENDMENT RELATED TO SECTION 9303.—

(1) Section 4972(c) of the 1986 Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) SPECIAL RULE FOR SELF-EMPLOYED INDIVIDUALS.—For purposes of paragraph (1), if—

“(A) the amount which is required to be contributed to a plan under section 412 on behalf of an individual who is an employee (within the meaning of section 401(c)(1)), exceeds

“(B) the earned income (within the meaning of section 404(a)(8)) of such individual derived from the trade or business with respect to which such plan is established, such excess shall be treated as an amount allowable as a deduction under section 404.”

(2)(A) Subparagraph (C) of section 412(1)(3) of the 1986 Code is amended—

(i) by striking out “October 17, 1987” in clause (i) and inserting in lieu thereof “October 29, 1987”, and

(ii) by striking out “October 16, 1987” in clause (iii) and inserting in lieu thereof “October 28, 1987”.

(B) Subparagraph (C) of section 302(d)(3) of the Employee Retirement Income Security Act of 1974 is amended—

(i) by striking out “October 17, 1987” in clause (i) and inserting in lieu thereof “October 29, 1987”, and

(ii) by striking out “October 16, 1987” in clause (iii) and inserting in lieu thereof “October 28, 1987”.

(b) AMENDMENTS RELATED TO SECTION 9307.—

(1) The last sentence of section 404(a)(1)(D) of the 1986 Code is amended by striking out “For purposes of this subparagraph” and inserting in lieu thereof “For purposes of determining whether a plan has more than 100 participants”.

(2) Section 404(a)(7)(A) of the 1986 Code is amended by adding at the end thereof the following new sentence: “For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan

29 USC 1082.

for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(l).”

(3) Section 404(a)(1)(D) of the 1986 Code is amended by striking out “(without regard to any reduction by the credit balance in the funding standard account)”.

(c) AMENDMENTS RELATED TO SECTION 9301.—

(1) Section 414(l) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(2) ALLOCATION OF ASSETS IN PLAN SPIN-OFFS, ETC.—

“(A) IN GENERAL.—In the case of a plan spin-off of a defined benefit plan, a trust which forms part of—

“(i) the original plan, or

“(ii) any plan spun off from such plan, shall not constitute a qualified trust under this section unless the applicable percentage of excess assets are allocated to each of such plans.

“(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term ‘applicable percentage’ means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

“(i) the excess (if any) of—

“(I) the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over

“(II) the amount of the assets required to be allocated to the plan after the spin-off (without regard to this paragraph), by

“(ii) the sum of the excess amounts determined separately under clause (i) for all such plans.

“(C) EXCESS ASSETS.—For purposes of subparagraph (A), the term ‘excess assets’ means an amount equal to the excess (if any) of—

“(i) the fair market value of the assets of the original plan immediately before the spin-off, over

“(ii) the amount of assets required to be allocated after the spin-off to all plans (determined without regard to this paragraph).

“(D) CERTAIN SPUN-OFF PLANS NOT TAKEN INTO ACCOUNT.—

“(i) IN GENERAL.—A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

“(ii) PLANS TRANSFERRED OUT OF CONTROLLED GROUPS.—A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

“(iii) PLANS TRANSFERRED OUT OF MULTIPLE EMPLOYER PLANS.—A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remaining after the spin-off which is also maintained by another employer (or member of the same controlled group as

such other employer) which maintained the plan in existence before the spin-off.

“(iv) **TERMINATED PLANS.**—A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

“(v) **CONTROLLED GROUP.**—For purposes of this subparagraph, the term ‘controlled group’ means any group treated as a single employer under subsection (b), (c), (m), or (o).

“(E) **PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.**—This paragraph does not apply to any multiemployer plan with respect to any spin-off to the extent that participants either before or after the spin-off are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

“(F) **APPLICATION TO SIMILAR TRANSACTION.**—Except as provided by the Secretary, rules similar to the rules of this paragraph shall apply to transactions similar to spin-offs.”

(2) Section 414(l) of the 1986 Code is amended by striking out the heading and inserting in lieu thereof:

“(l) **MERGER AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.**—

“(1) **IN GENERAL.**—”

26 USC 414 note.

(3)(A) Except as provided in subparagraph (B), the amendments made by this subsection shall apply with respect to transactions occurring after July 26, 1988.

(B) The amendments made by this subsection shall not apply to any transaction occurring after July 26, 1988, if on or before such date the board of directors of the employer, approves such transaction or the employer took similar binding action.

(d) **OTHER PROVISIONS.**—

(1) Subparagraph (C) of section 412(l)(3) of the 1986 Code is amended—

(A) by striking out “October 17, 1987” in clause (i) and inserting in lieu thereof “October 29, 1987”, and

(B) by striking out “October 16, 1987” in clause (iii) and inserting in lieu thereof “October 28, 1987”.

29 USC 1082.

(2) Subparagraph (B) of section 302(d)(3) of the Employee Retirement Income Security Act of 1974 is amended—

(A) by striking out “October 17, 1987” in clause (i) and inserting in lieu thereof “October 29, 1987”, and

(B) by striking out “October 16, 1987” in clause (iii) and inserting in lieu thereof “October 28, 1987”.

26 USC 404 note.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987 to which it relates.

SEC. 2006. AMENDMENTS RELATED TO SECTION 9201 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.

(a) Subsection (c) of section 4132 of the 1986 Code (relating to imposition of tax on certain vaccines) is amended by redesignating paragraphs (1) and (2) as paragraphs (3) and (4), respectively, and by inserting before paragraph (3) (as so redesignated) the following new paragraphs:

“(1) **CERTAIN USES TREATED AS SALES.**—Any manufacturer, producer, or importer of a vaccine which uses such vaccine

before it is sold shall be liable for the tax imposed by section 4131 in the same manner as if such vaccine were sold by such manufacturer, producer, or importer.

“(2) TREATMENT OF VACCINES SHIPPED TO UNITED STATES POSSESSIONS.—Section 4221(a)(2) shall not apply to any vaccine shipped to a possession of the United States.”

(b) Subsection (a) of section 9510 of the 1986 Code is amended—

(1) by inserting “appropriated or” before “credited”, and

(2) by inserting “this section or” before “section 9602(b)”.

(c) The amendments made by this section shall take effect as if included in the amendments made by section 9201 of the Omnibus Budget Reconciliation Act of 1987.

Effective date.
26 USC 4132
note.

TITLE III—ADDITIONAL SIMPLIFICATION AND CLARIFICATION PROVISIONS

Subtitle A—Diesel Fuel Excise Tax Collection and Exemption Procedures

SEC. 3001. TAX-FREE PURCHASES OF CERTAIN FUELS.

(a) IN GENERAL.—Subsection (c) of section 4093 of the 1986 Code (relating to exceptions; special rule) is amended to read as follows:

“(c) EXEMPTION FOR NONTAXABLE USES AND BUS USES.—

“(1) IN GENERAL.—No tax shall be imposed by section 4091 on fuel sold by a producer or importer for use by the purchaser in a nontaxable use (as defined in section 6427(1)(2)) or a use described in section 6427(b)(1).

“(2) EXCEPTIONS.—

“(A) CERTAIN LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES.—In the case of fuel sold for use in—

“(i) a diesel-powered train, and

“(ii) an aircraft,

paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section.

“(B) CERTAIN BUS USES.—Paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is not refundable by reason of the application of section 6427(b)(2)(A).

“(3) REGISTRATION REQUIRED.—Except to the extent provided by the Secretary, paragraph (1) shall not apply to any sale unless—

“(A) both the seller and the purchaser are registered under section 4101, and

“(B) the purchaser's name, address, and registration number under such section are provided to the seller.

“(4) INFORMATION REPORTING.—

“(A) RETURNS BY PRODUCERS AND IMPORTERS.—Each producer or importer who makes a reduced-tax sale during the calendar year shall make a return (at such time and in such form as the Secretary may by regulations prescribe) showing with respect to each such sale—

“(i) the name, address, and registration number under section 4101 of the purchaser,

“(ii) the amount of fuel sold, and

“(iii) such other information as the Secretary may require.

“(B) STATEMENTS TO PURCHASERS.—Every person required to make a return under subparagraph (A) shall furnish to each purchaser whose name is required to be set forth on such return a written statement showing the name and address of the person required to make such return, the registration number under section 4101 of such person, and the information required to be shown on the return with respect to such purchaser. The written statement required under the preceding sentence shall be furnished to the purchaser on or before January 31 of the year following the calendar year for which the return under subparagraph (A) is required to be made.

“(C) RETURNS BY PURCHASERS.—Each person who uses during the calendar year fuel purchased in a reduced-tax sale shall make a return (at such time and in such form as the Secretary may by regulations prescribe) showing—

“(i) whether such use was a nontaxable use (as defined in section 6427(l)(2)) or a use described in section 6427(b)(1) and the amount of fuel so used,

“(ii) the date of the sale of the fuel so used,

“(iii) the name, address, and registration number under section 4101 of the seller, and

“(iv) such other information as the Secretary may require.

“(D) REDUCED-TAX SALE.—For purposes of this paragraph, the term ‘reduced tax sale’ means any sale of taxable fuel on which the amount of tax otherwise required to be paid under section 4091 is reduced by reason of paragraph (1) (other than sales described in subsections (a) and (b) of this section).”

(b) PENALTY FOR FAILING TO PROVIDE INFORMATION.—

(1) Subparagraph (B) of section 6724(d)(1) of the 1986 Code (defining information return) is amended by striking out “or” at the end of clause (ix), by striking out the period at the end of clause (x) and inserting in lieu thereof “, or”, and by adding at the end thereof the following new clause:

“(xi) subparagraph (A) or (C) of subsection (c)(4), or subsection (d), of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels).”

(2) Paragraph (2) of section 6724(d) of the 1986 Code (defining payee statement) is amended by striking out “or” at the end of subparagraph (S), by striking out the period at the end of subparagraph (T) and inserting in lieu thereof “, or”, and by adding at the end thereof the following new subparagraph:

“(U) section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels).”

(3)(A) The text of section 7232 of the 1986 Code is amended by striking out “or lubricating oil” and inserting in lieu thereof “, lubricating oil, diesel fuel, or aviation fuel”.

(B) The heading for section 7232 of the 1986 Code is amended by striking out “OR LUBRICATING OIL” and inserting in lieu

thereof “, LUBRICATING OIL, DIESEL FUEL, OR AVIATION FUEL”.

(C) The table of sections for part II of subchapter A of chapter 75 of the 1986 Code is amended by striking out “or lubricating oil” in the item relating to section 7232 and inserting in lieu thereof “, lubricating oil, diesel fuel, or aviation fuel”.

(c) **EFFECTIVE DATE.**—

26 USC 4093
note.

(1) **IN GENERAL.**—The amendments made by this section shall take effect on January 1, 1989.

(2) **REFUNDS WITH INTEREST FOR PRE-EFFECTIVE DATE PURCHASES.**—

(A) **IN GENERAL.**—In the case of fuel—

(i) which is purchased from a producer or importer during the period beginning on April 1, 1988, and ending on December 31, 1988,

Imports.

(ii) which is used (before the claim under this subparagraph is filed) by any person in a nontaxable use (as defined in section 6427(l)(2) of the 1986 Code), and

Claims.

(iii) with respect to which a claim is not permitted to be filed for any quarter under section 6427(i) of the 1986 Code,

Claims.

the Secretary of the Treasury or the Secretary's delegate shall pay (with interest) to such person the amount of tax imposed on such fuel under section 4091 of the 1986 Code (to the extent not attributable to amounts described in section 6427(l)(3) of the 1986 Code) if claim therefor is filed not later than June 30, 1989. Not more than 1 claim may be filed under the preceding sentence and such claim shall not be taken into account under section 6427(i) of the 1986 Code. Any claim for refund filed under this paragraph shall be considered a claim for refund under section 6427(l) of the 1986 Code.

(B) **INTEREST.**—The amount of interest payable under subparagraph (A) shall be determined under section 6611 of the 1986 Code except that the date of the overpayment with respect to fuel purchased during any month shall be treated as being the 1st day of the succeeding month. No interest shall be paid under this paragraph with respect to fuel used by any agency of the United States.

(C) **REGISTRATION PROCEDURES REQUIRED TO BE SPECIFIED.**—Not later than the 30th day after the date of the enactment of this Act, the Secretary of the Treasury or the Secretary's delegate shall prescribe the procedures for complying with the requirements of section 4093(c)(3) of the 1986 Code (as added by this section).

SEC. 3002. EXPEDITED REFUND FOR CERTAIN FUELS USED IN NONTAXABLE USES.

(a) **EXPEDITED REFUND.**—Section 6427(i) of the 1986 Code (relating to time for filing claims; period covered) is amended by adding at the end thereof the following new paragraph:

“(4) **SPECIAL RULE FOR NONTAXABLE USES OF DIESEL FUEL AND AVIATION FUEL TAXED UNDER SECTION 4091.**—

“(A) **IN GENERAL.**—If at the close of any of the 1st 3 quarters of the taxable year of any person, at least \$750 is payable under subsection (l) to such person with respect to

Claims.

fuel used during such quarter or any prior quarter during the taxable year (and for which no other claim has been filed), a claim may be filed under subsection (l) with respect to such fuel.

“(B) **TIME FOR FILING CLAIM.**—No claim filed under this paragraph shall be allowed unless filed during the 1st quarter following the last quarter included in the claim.”

(b) **ALLOWANCE OF PAYMENT.**—Paragraph (2) of section 6427(k) of the 1986 Code (relating to income tax credit in lieu of payment), as amended by title I, is amended by striking out “paragraph (2) or (3)” and inserting in lieu thereof “paragraph (2), (3), or (4)”.

(c) **CONFORMING AMENDMENTS.**—

(1) Paragraph (1) of section 6427(i) of the 1986 Code is amended by striking out “paragraph (2)” and inserting in lieu thereof “paragraphs (2), (3), and (4)”.

(2) Paragraph (2)(A) of section 6427(i) of the 1986 Code is amended by striking out “(l),”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fuel used after December 31, 1988.

26 USC 6427
note.

SEC. 3003. MARINE RETAILERS TREATED AS PRODUCERS.

(a) **IN GENERAL.**—Subparagraph (B) of section 4092(b)(1) of the 1986 Code (relating to certain persons treated as producers) is amended by striking out the period at the end of clause (ii) and inserting in lieu thereof “, or” and by adding at the end thereof the following:

“(iii) a retailer selling diesel fuel exclusively to purchasers as supplies for commercial and noncommercial vessels.

To the extent provided in regulations, a retailer shall not be treated as not described in clause (iii) by reason of selling de minimis amounts of diesel fuel other than as supplies for commercial and noncommercial vessels.”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to sales after December 31, 1988.

26 USC 4092
note.

Subtitle B—Health Care Continuation Rules

SEC. 3011. FAILURE TO SATISFY CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.

(a) **IN GENERAL.**—Chapter 43 of the 1986 Code (relating to qualified pension, etc., plans) is amended by adding at the end thereof the following new section:

“SEC. 4980B. FAILURE TO SATISFY CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.

“(a) **GENERAL RULE.**—There is hereby imposed a tax on the failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary.

“(b) **AMOUNT OF TAX.**—

“(1) **IN GENERAL.**—The amount of the tax imposed by subsection (a) on any failure with respect to a qualified beneficiary shall be \$100 for each day in the noncompliance period with respect to such failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period—

"(A) beginning on the date such failure first occurs, and
"(B) ending on the earlier of—

"(i) the date such failure is corrected, or

"(ii) the date which is 6 months after the last day in the period applicable to the qualified beneficiary under subsection (f)(2)(B) (determined without regard to clause (iii) thereof).

If a person is liable for tax under subsection (e)(1)(B) by reason of subsection (e)(2)(B) with respect to any failure, the noncompliance period for such person with respect to such failure shall not begin before the 45th day after the written request described in subsection (e)(2)(B) is provided to such person.

"(3) MINIMUM TAX FOR NONCOMPLIANCE PERIOD WHERE FAILURE DISCOVERED AFTER NOTICE OF EXAMINATION.—Notwithstanding paragraphs (1) and (2) of subsection (c)—

"(A) IN GENERAL.—In the case of 1 or more failures with respect to a qualified beneficiary—

"(i) which are not corrected before the date a notice of examination of income tax liability is sent to the employer, and

"(ii) which occurred or continued during the period under examination,

the amount of tax imposed by subsection (a) by reason of such failures with respect to such beneficiary shall not be less than the lesser of \$2,500 or the amount of tax which would be imposed by subsection (a) without regard to such paragraphs.

"(B) HIGHER MINIMUM TAX WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations by the employer (or the plan in the case of a multiemployer plan) for any year are more than de minimis, subparagraph (A) shall be applied by substituting '\$15,000' for '\$2,500' with respect to the employer (or such plan).

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons referred to in subsection (e) knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) \$100 LIMIT ON AMOUNT OF TAX FOR FAILURES ON ANY DAY WITH RESPECT TO A QUALIFIED BENEFICIARY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the maximum amount of tax imposed by subsection (a)

on failures on any day during the noncompliance period with respect to a qualified beneficiary shall be \$100.

"(B) SPECIAL RULE WHERE MORE THAN 1 QUALIFIED BENEFICIARY.—If there is more than 1 qualified beneficiary with respect to the same qualifying event, the maximum amount of tax imposed by subsection (a) on all failures on any day during the noncompliance period with respect to such qualified beneficiaries shall be \$200.

"(4) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect—

"(A) SINGLE EMPLOYER PLANS.—

"(i) IN GENERAL.—In the case of failures with respect to plans other than multiemployer plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

"(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

"(II) \$500,000.

"(ii) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

"(B) MULTIEMPLOYER PLANS.—

"(i) IN GENERAL.—In the case of failures with respect to a multiemployer plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

"(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 213(d)) directly or through insurance, reimbursement, or otherwise, or

"(II) \$500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as 1 plan.

"(ii) SPECIAL RULE FOR EMPLOYERS REQUIRED TO PAY TAX.—If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a multiemployer plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a multiemployer plan.

"(C) SPECIAL RULE FOR PERSONS PROVIDING BENEFITS.—In the case of a person described in subsection (e)(1)(B) (and not subsection (e)(1)(A)), the aggregate amount of tax imposed by subsection (a) for failures during a taxable year with respect to all plans shall not exceed \$2,000,000.

“(5) **WAIVER BY SECRETARY.**—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

“(d) **TAX NOT TO APPLY TO CERTAIN PLANS.**—This section shall not apply to—

“(1) any failure of a group health plan to meet the requirements of subsection (f) if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year,

“(2) any governmental plan (within the meaning of section 414(d)), or

“(3) any church plan (within the meaning of section 414(e)).

“(e) **LIABILITY FOR TAX.**—

“(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

“(A)(i) In the case of a plan other than a multiemployer plan, the employer.

“(ii) In the case of a multiemployer plan, the plan.

“(B) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the plan and whose act or failure to act caused (in whole or in part) the failure.

“(2) **SPECIAL RULES FOR PERSONS DESCRIBED IN PARAGRAPH (1)(B).**—

“(A) **NO LIABILITY UNLESS WRITTEN AGREEMENT.**—Except in the case of liability resulting from the application of subparagraph (B) of this paragraph, a person described in subparagraph (B) (and not in subparagraph (A)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

“(B) **FAILURE TO COVER QUALIFIED BENEFICIARIES WHERE CURRENT EMPLOYEES ARE COVERED.**—A person shall be treated as described in paragraph (1)(B) with respect to a qualified beneficiary if—

“(i) such person provides coverage under a group health plan for any similarly situated beneficiary under the plan with respect to whom a qualifying event has not occurred, and

“(ii) the—

“(I) employer or plan administrator, or

“(II) in the case of a qualifying event described in subparagraph (C) or (E) of subsection (f)(3) where the person described in clause (i) is the plan administrator, the qualified beneficiary, submits to such person a written request that such person make available to such qualified beneficiary the same coverage which such person provides to the beneficiary referred to in clause (i).

“(f) **CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.**—

“(1) **IN GENERAL.**—A group health plan meets the requirements of this subsection only if each qualified beneficiary who

would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

"(2) CONTINUATION COVERAGE.—For purposes of paragraph (1), the term 'continuation coverage' means coverage under the plan which meets the following requirements:

"(A) TYPE OF BENEFIT COVERAGE.—The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.

"(B) PERIOD OF COVERAGE.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

"(1) MAXIMUM REQUIRED PERIOD.—

"(i) GENERAL RULE FOR TERMINATIONS AND REDUCED HOURS.—In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

"(ii) SPECIAL RULE FOR MULTIPLE QUALIFYING EVENTS.—If a qualifying event (other than a qualifying event described in paragraph (3)(F)) occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

"(iii) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (g)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

"(iv) GENERAL RULE FOR OTHER QUALIFYING EVENTS.—In the case of a qualifying event not described in paragraph (3)(B) or (3)(F), the date which is 36 months after the date of the qualifying event.

"(ii) END OF PLAN.—The date on which the employer ceases to provide any group health plan to any employee.

"(iii) FAILURE TO PAY PREMIUM.—The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days

after the date due or within such longer period as applies to or under the plan.

“(iv) GROUP HEALTH PLAN COVERAGE OR MEDICARE ELIGIBILITY.—The date on which the qualified beneficiary first becomes, after the date of the election—

“(I) covered under any other group health plan (as an employee or otherwise), or

“(II) in the case of a qualified beneficiary other than a qualified beneficiary described in subsection (g)(1)(D) entitled to benefits under title XVIII of the Social Security Act.

“(C) PREMIUM REQUIREMENTS.—The plan may require payment of a premium for any period of continuation coverage, except that such premium—

“(i) shall not exceed 102 percent of the applicable premium for such period, and

“(ii) may, at the election of the payor, be made in monthly installments.

If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

“(D) NO REQUIREMENT OF INSURABILITY.—The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

“(E) CONVERSION OPTION.—In the case of a qualified beneficiary whose period of continuation coverage expires under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

“(3) QUALIFYING EVENT.—For purposes of this subsection, the term ‘qualifying event’ means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary—

“(A) The death of the covered employee.

“(B) The termination (other than by reason of such employee’s gross misconduct), or reduction of hours, of the covered employee’s employment.

“(C) The divorce or legal separation of the covered employee from the employee’s spouse.

“(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

“(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

“(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in subsection (g)(1)(D) within one year before or after the date of commencement of the proceeding.

“(4) APPLICABLE PREMIUM.—For purposes of this subsection—

“(A) **IN GENERAL.**—The term ‘applicable premium’ means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

“(B) **SPECIAL RULE FOR SELF-INSURED PLANS.**—To the extent that a plan is a self-insured plan—

“(i) **IN GENERAL.**—Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

“(I) is determined on an actuarial basis, and

“(II) takes into account such factors as the Secretary may prescribe in regulations.

“(ii) **DETERMINATION ON BASIS OF PAST COST.**—If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

“(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

“(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

“(iii) **CLAUSE (ii) NOT TO APPLY WHERE SIGNIFICANT CHANGE.**—A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

“(C) **DETERMINATION PERIOD.**—The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

“(5) **ELECTION.**—For purposes of this subsection—

“(A) **ELECTION PERIOD.**—The term ‘election period’ means the period which—

“(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

“(ii) is of at least 60 days’ duration, and

“(iii) ends not earlier than 60 days after the later of—

“(I) the date described in clause (i), or

“(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

“(B) EFFECT OF ELECTION ON OTHER BENEFICIARIES.—Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of subsection (g)(1) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

“(6) NOTICE REQUIREMENT.—In accordance with regulations prescribed by the Secretary—

“(A) The group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

“(B) The employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3) with respect to such employee within 30 days of the date of the qualifying event.

“(C) Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3) within 60 days after the date of the qualifying event.

“(D) The plan administrator shall notify—

“(i) in the case of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3), any qualified beneficiary with respect to such event, and

“(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

For purposes of subparagraph (D), any notification shall be made within 14 days of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

“(7) COVERED EMPLOYEE.—For purposes of this subsection, the term ‘covered employee’ means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer.

“(g) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED BENEFICIARY.—

“(A) IN GENERAL.—The term ‘qualified beneficiary’ means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

“(i) as the spouse of the covered employee, or

“(ii) as the dependent child of the employee.

“(B) SPECIAL RULE FOR TERMINATIONS AND REDUCED EMPLOYMENT.—In the case of a qualifying event described in subsection (f)(3)(B), the term ‘qualified beneficiary’ includes the covered employee.

“(C) EXCEPTION FOR NONRESIDENT ALIENS.—Notwithstanding subparagraphs (A) and (B), the term ‘qualified beneficiary’ does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship of the individual.

“(D) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in subsection (f)(3)(F), the term ‘qualified beneficiary’ includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

“(i) as the spouse of the covered employee,

“(ii) as the dependent child of the covered employee,

or

“(iii) as the surviving spouse of the covered employee.

“(2) GROUP HEALTH PLAN.—The term ‘group health plan’ has the meaning given such term by section 162(i).”

“(3) PLAN ADMINISTRATOR.—The term ‘plan administrator’ has the meaning given the term ‘administrator’ by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

“(4) CORRECTION.—A failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary shall be treated as corrected if—

“(A) such failure is retroactively undone to the extent possible, and

“(B) the qualified beneficiary is placed in a financial position which is as good as such beneficiary would have been in had such failure not occurred.

For purposes of applying subparagraph (B), the qualified beneficiary shall be treated as if he had elected the most favorable coverage in light of the expenses he incurred since the failure first occurred.”

(b) TECHNICAL AMENDMENTS.—

(1) Section 106 of the 1986 Code (relating to contributions by employer to accident and health plans) is amended to read as follows:

“SEC. 106. CONTRIBUTIONS BY EMPLOYER TO ACCIDENT AND HEALTH PLANS.

“Gross income of an employee does not include employer-provided coverage under an accident or health plan.”

(2) Subsection (i) of section 162 of the 1986 Code (relating to group health plans) is amended by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(3) Section 162 of the 1986 Code is amended by striking out subsection (k) and by redesignating—

(A) the subsection relating to stock redemption expenses as subsection (k),

(B) the subsection relating to special rules for health insurance costs of self-employed individuals as subsection (l), and

(C) the subsection relating to cross references as subsection (m).

(4) Subparagraph (C) of section 414(n)(3) of the 1986 Code, as amended by section 111B(a) of this Act, is amended by striking out “162(i)(2), 162(k)(2),” and by striking out “and 505” and inserting in lieu thereof “505, and 4980B”.

(5) Paragraph (2) of section 414(t) of the 1986 Code, as amended by section 111B(a) of this Act, is amended by striking out “162(i)(2), 162(k)(2),” and by striking out “or 505” and inserting in lieu thereof “505, or 4980B”.

(6) Paragraph (1) of section 607 of the Employee Retirement Income Security Act of 1974 is amended by striking out “section 162(i)(3) of the Internal Revenue Code of 1954” and inserting in lieu thereof “section 162(i)(2) of the Internal Revenue Code of 1986”.

29 USC 1167.

(7) Paragraph (1) of section 2208 of the Public Health Service Act is amended by striking out “section 162(i)(3) of the Internal Revenue Code of 1954” and inserting in lieu thereof “section 162(i)(2) of the Internal Revenue Code of 1986”.

42 USC 300bb-8.

(c) **CLERICAL AMENDMENT.**—The table of sections for chapter 43 of the 1986 Code is amended by adding at the end thereof the following new item:

“Sec. 4980B. Failure to satisfy continuation coverage requirements of group health plans.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1988, but shall not apply to any plan for any plan year to which section 162(k) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) did not apply by reason of section 10001(e)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

26 USC 162 note.

Subtitle C—Employee Benefit Nondiscrimination Rules

SEC. 3021. MODIFICATIONS TO DISCRIMINATION RULES APPLICABLE TO CERTAIN EMPLOYEE BENEFIT PLANS.

(a) MODIFICATIONS TO SECTION 89.—

(1) DETERMINATIONS BASED ON TESTING YEAR.—

(A) Section 89 of the 1986 Code (as amended by title I) is amended by striking out “plan year” each place it appears and inserting in lieu thereof “testing year”.

(B) Subsection (j) of section 89 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(13) **TESTING YEAR.**—The term ‘testing year’ means—

“(A) any 12-month period beginning with the calendar month designated in the plan for purposes of this section, or

“(B) if there is no such designation, the calendar year. No period may be designated under subparagraph (A) unless the same period is designated with respect to all other plans of the employer of the same type. Any designation under subparagraph (A) may be changed only with the consent of the Secretary.”

(C) Subsection (c) of section 4976 of the 1986 Code (as added by title I) is amended—

(i) by striking out “any plan year” in paragraph (1) and inserting in lieu thereof “any testing year (as defined in section 89(j)(13))”; and

(ii) by striking out “such plan year” each place it appears in paragraph (2)(A) and inserting in lieu thereof “such testing year”.

(2) TIME FOR TESTING.—

(A) IN GENERAL.—Subsection (g) of section 89 is amended by adding at the end thereof the following new paragraph:

“(6) TIME FOR TESTING.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the determination of whether any plan is a discriminatory employee benefit plan for any testing year shall be made on the basis of the facts as of the testing day.

“(B) ADJUSTMENT WHERE BENEFIT OF HIGHLY COMPENSATED EMPLOYEE CHANGES.—If the employer-provided benefit (actually provided or made available) of a highly compensated employee changes during the testing year by reason of any change in the terms of the plan or the making of an election by such employee, the amount taken into account as such employee’s employer-provided benefit shall be adjusted to take into account such change and the portion of the testing year during which the changed benefit is provided (or made available).

“(C) TREATMENT OF NON-HIGHLY COMPENSATED EMPLOYEES WHERE CHANGE IN PLAN.—Rules similar to the rules of subparagraph (B) shall apply in the case of employees who are not highly compensated employees and who are affected by any change in the terms of the plan, except that the determination of such employees’ employer-provided benefits (actually provided or made available) shall be determined as of the date after such change selected by the employer and permitted under regulations prescribed by the Secretary.

“(D) TESTING DAY.—For purposes of this paragraph, the term ‘testing day’ means—

“(i) the day designated in the plan as the testing day for purposes of this paragraph, or

“(ii) if there is no day so designated, the last day of the testing year.

“(E) LIMITATIONS.—

“(i) DESIGNATION MUST BE CONSISTENT FOR ALL PLANS OF SAME TYPE.—No day may be designated under subparagraph (D)(i) with respect to any plan unless the same day is so designated with respect to all other plans of the employer of the same type.

“(ii) DESIGNATION BINDING.—Any designation under subparagraph (D)(i) shall apply to the testing year for

which made and all subsequent years unless revoked with the consent of the Secretary.

“(F) **SPECIAL RULE FOR MULTIPLE EMPLOYER PLAN.**—In the case of a multiemployer plan or any other plan maintained by more than 1 employer, each employer may, subject to such rules as the Secretary may prescribe, elect its own testing year under paragraph (13) of subsection (j) and its own testing date under this paragraph.”

(B) **DESIGNATIONS FOR 1989 NOT BINDING.**—Any designation of a testing day for a year beginning in 1989 shall be disregarded in determining the day which may be designated as the testing day for years beginning after 1989.

26 USC 89 note.

(3) **SAMPLING.**—Subsection (g) of section 89 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(7) **SAMPLING.**—For purposes of determining whether a plan is a discriminatory employee benefit plan (but not for purposes of identifying the highly compensated employees who have a discriminatory excess or the amount of any such excess), determinations under this section may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

Discrimination,
prohibition.

“(A) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

“(B) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.”

(4) **SPECIAL VALUATION RULE FOR MULTIEmployer PLANS.**—Paragraph (3) of section 89(g) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(E) **SPECIAL RULE FOR MULTIEmployer PLANS.**—

“(i) **IN GENERAL.**—Except as provided in regulations and clause (ii), an employer may treat the contribution such employer makes to a multiemployer plan on behalf of an employee as the employer-provided benefit of such employee under such plan.

“(ii) **ADJUSTMENT.**—If—

“(I) the allocation of plan benefits between highly compensated employees and other employees under a multiemployer plan (or within either of such groups) varies materially from the allocation of employer contributions to such plan, or

“(II) the employer contributions relate to benefits of different types,

the employer-provided benefit determined under clause (i) shall be appropriately adjusted to take into account such material variation or such employer contribution.

“(iii) **EXCEPTION FOR PROFESSIONALS.**—This subparagraph shall not apply to any employer maintaining a multiemployer plan if such employer makes contributions to such plan on behalf of any individual performing services in the field of health, law, engineering, architecture, accounting, actuarial science, financial services, or consulting or in such other field as the Secretary may prescribe.”

(5) **EXCLUDED EMPLOYEE REQUIREMENTS.**—

(A) **MULTIEMPLOYER PLANS.**—Subsection (h) of section 89 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(6) **SPECIAL RULE FOR MULTIEMPLOYER PLAN.**—Except as provided in regulations, any multiemployer plan shall not be taken into account in applying subparagraph (A), (B), (C), or (D) of paragraph (1) with respect to other plans of the employer. For purposes of this paragraph, a rule similar to the rule of subsection (g)(3)(E)(iii) shall apply.”

(B) **STUDENTS.**—Paragraph (1) of section 89(h) of the 1986 Code is amended by adding after subparagraph (F) the following new subparagraph:

“(G) Employees who are students if—

“(i) such students are performing services described in section 3121(b)(10), and

“(ii) core health coverage is made available to such students by such employer.”

(6) **COMPARABILITY RULES.**—Paragraph (1) of section 89(g) of the 1986 Code, as amended by section 111B(a)(3), is amended by adding at the end thereof the following new subparagraphs:

“(D) **SPECIAL RULES FOR APPLYING SUBSECTION (f).**—

“(i) **IN GENERAL.**—For purposes of applying subsection (f)—

“(I) except as provided in clause (ii), subparagraph (B) shall be applied by substituting ‘90 percent’ for ‘95 percent’, and

“(II) a group of plans of the same type shall be treated as comparable plans if the requirements of subparagraph (E) are met.

“(ii) **ELECTION TO USE LOWER PERCENTAGE IN DETERMINING COMPARABILITY.**—If an election by the employer under this clause applies for the testing year—

“(I) subclause (I) of clause (i) shall not apply,

“(II) for purposes of applying subsection (f), subparagraph (B) of this paragraph shall be applied by substituting ‘80 percent’ for ‘95 percent’, and

“(III) subsection (f) shall be applied with respect to all health plans maintained by the employer by substituting ‘90 percent’ for ‘80 percent’.

“(E) **PLANS TREATED AS COMPARABLE IF EMPLOYEE COST DIFFERENCE IS \$100 OR LESS.**—

“(i) **IN GENERAL.**—A group of plans of the same type shall be treated as comparable with respect to a group of employees if—

“(I) such plans are available to all employees in the group on the same terms, and

“(II) the difference in annual cost to employees between the plans with the lowest and highest annual employee cost is not greater than \$100.

“(ii) **COORDINATION WITH SUBPARAGRAPH (B).**—A plan not in the group of plans described in clause (i) shall be treated as part of such group if, under subparagraph (B) (without regard to clause (iii) of this subparagraph), such plan is comparable to the plan in such group with the largest employer-provided benefit.

“(iii) **OTHER PLANS PROVIDING COMPARABLE BENEFITS.**—A plan not in the group of plans described in clause (i) shall be treated as part of such group with respect to an employee if—

“(I) in the case of an employee who is not a highly compensated employee, such employee is eligible to participate in the plan in such group with the largest employer-provided benefit (without regard to clause (ii)),

“(II) in the case of an employee who is not a highly compensated employee, the annual cost to such employee under such plan is not lower than the lowest cost permitted within such group, and

“(III) the employer-provided benefit under such plan is less than the employer-provided benefit under the plan in such group with the largest such benefit (without regard to clause (ii)).

“(iv) **SEPARATE APPLICATION OF REQUIREMENTS.**—If an employer elects the application of paragraph (2)(A)(ii), the amount under clause (i) shall be allocated among plans covering spouses and dependents and plans covering employees in such manner as the employer specifies.

“(v) **COST-OF-LIVING ADJUSTMENT.**—In the case of testing years beginning after 1989, the \$100 amount under clause (i) shall be increased by the percentage (if any) by which—

“(I) the CPI for the calendar year preceding the year in which the testing year begins, exceeds

“(II) the CPI for 1988.

For purposes of this clause, the CPI for any calendar year shall be determined under section 1(f).”

(7) **OTHER COVERAGE.**—

(A) Subparagraph (A) of section 89(g)(2) of the 1986 Code is amended—

(i) by striking out “subsection (e)” each place it appears and inserting in lieu thereof “subsection (e) or (f)”, and

(ii) by adding at the end thereof the following new sentence: “The provisions of the preceding sentence shall not apply for purposes of applying subsection (f) unless the requirements of subsection (f) would be met if such subsection were applied without regard to the preceding sentence and on the basis of eligibility to participate rather than coverage.”

(B) Subparagraph (D) of section 89(g)(2) of the 1986 Code is amended by adding at the end thereof the following sentence: “The Secretary shall make such adjustments as are necessary in applying the rules of the preceding sentence to subsection (f).”

(8) **SWORN STATEMENTS.**—Paragraph (2) of section 89(g) of the 1986 Code is amended—

(A) by adding at the end thereof the following new subparagraph:

“(E) **SPECIAL RULE.**—No employee who is not a highly compensated employee may be disregarded under subparagraph (A)(i) with respect to any health plan of the employer

unless under such plan such employee is entitled, when the coverage under the other health plan referred to in subparagraph (A)(i) ceases, to elect coverage under the plan of the employer (whether or not an election is otherwise available). Such election is to be on the same terms as if such employee was making such election during a subsequent open season. Rules similar to the rules of the preceding sentences of this subparagraph shall apply in the case of an employee treated as not having a spouse or dependents or having a spouse or dependents covered by a health plan of another employer providing core benefits.”; and

(B) by striking out “and” at the end of subparagraph (B)(i), by striking out the period at the end of subparagraph (B)(ii) and inserting in lieu thereof “, and”, and by adding at the end thereof the following new clause:

“(iii) the health coverage (if any) received by the employee from the employer.”

(9) **DEFINITION OF PLAN.**—Paragraph (11) of section 89(j) of the 1986 Code is amended by striking out “Each option” and inserting in lieu thereof “Except as provided in subsection (g)(1), each option”.

(10) **MODIFICATION OF PENALTY.**—Subparagraph (B) of section 6652(k)(2) of the 1986 Code is amended to read as follows:

“(B) the amount which bears the same ratio to the employer-provided benefit (within the meaning of section 89 without regard to subsection (g)(3)(C)(i) thereof) with respect to the employee to whom such failure relates as the amount of such benefit required to be but not shown on timely statements under sections 6051(a) and 6051(d) bears to the amount required to be shown.”.

(11) **CAFETERIA PLANS.**—Subparagraph (D) of section 89(g)(3) of the 1986 Code is amended to read as follows:

“(D) **SALARY REDUCTIONS.**—

“(i) **IN GENERAL.**—Except for purposes of subsections (d)(1)(A)(ii) and (j)(5), any salary reduction shall be treated as an employer-provided benefit.

“(ii) **SPECIAL RULE FOR SUBSECTION (d)(1)(A)(ii).**—Notwithstanding clause (i), any salary reduction under a cafeteria plan (within the meaning of section 125) shall be treated as an employer-provided benefit for purposes of subsection (d)(1)(A)(ii) if—

“(I) the percentage of employees who are not highly compensated employees eligible to participate in the plan is not greater than the percentage of highly compensated employees so eligible,

“(II) all employees eligible to participate in the plan are eligible under the same terms and conditions, and

“(III) no highly compensated employee eligible under the plan is eligible to participate in any other plan maintained by the employer for any benefit of the same type unless the benefit is available on the same terms and conditions to every employee who is not a highly compensated employee eligible to participate in the plan.

“(iii) **REGULATIONS.**—Notwithstanding clause (i) or (ii), the Secretary may by regulations provide that any

salary reduction shall or shall not be treated as an employer-provided benefit to prevent avoidance of the purposes of this section."

(12) **PART-TIME EMPLOYEES.**—Paragraph (5) of section 89(j) of the 1986 Code is amended by striking out the last sentence thereof.

(13) **ACQUISITIONS AND DISPOSITIONS.**—

(A) Clause (ii) of section 89(j)(8)(A) of the 1986 Code is amended to read as follows:

"(ii) either—

"(I) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members in such group), or

"(II) such plan meets such other requirements as the Secretary may prescribe by regulation."

(B) Subclause (II) of section 410(b)(6)(C)(i) of the 1986 Code is amended by inserting "or such plan meets such other requirements as the Secretary may prescribe by regulation" before the end period.

(14) **DEPENDENT CARE ASSISTANCE.**—Subparagraph (B) of section 129(d)(7) of the 1986 Code (as redesignated and amended by section 111B of this Act) is amended—

(A) by striking out "(within the meaning of section 414(q)(7))", and

(B) by adding at the end thereof the following new sentence: "For purposes of this subparagraph, the term 'compensation' has the meaning given such term by section 414(q)(7), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees."

(15) **REPORTING REQUIREMENTS.**—

(A) Section 6039D(d) of the 1986 Code is amended—

(i) by adding at the end thereof the following new paragraph:

"(3) **SPECIAL RULE FOR MULTIEMPLOYER PLANS.**—In the case of a multiemployer plan, the plan shall be required to provide any information required by this section which the Secretary determines, on the basis of the agreement between the plan and employer, is held by the plan (and not the employer)", and

(ii) by inserting "AND SPECIAL RULES" after "DEFINITIONS" in the heading thereof.

(B) The amendments made by this paragraph shall apply to years beginning after 1984.

26 USC 6039D
note.

(b) **MODIFICATION TO DEFINITIONS OF HIGHLY COMPENSATED AND COMPENSATION AND TO SEPARATE LINE OF BUSINESS RULES.**—

(1) **DEFINITION OF HIGHLY COMPENSATED.**—Subsection (q) of section 414 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(12) **SIMPLIFIED METHOD FOR DETERMINING HIGHLY COMPENSATED EMPLOYEES.**—

"(A) **IN GENERAL.**—If an election by the employer under this paragraph applies to any year, in determining whether an employee is a highly compensated employee for such year—

"(i) subparagraph (B) of paragraph (1) shall be applied by substituting '\$50,000' for '\$75,000', and

"(ii) subparagraph (C) of paragraph (1) shall not apply.

"(B) REQUIREMENT FOR ELECTION.—An election under this paragraph shall not apply to any year unless—

"(i) at all times during such year, the employer maintained significant business activities (and employed employees) in at least 2 significantly separate geographic areas, and

"(ii) the employer satisfies such other conditions as the Secretary may prescribe."

(2) LINE OF BUSINESS REQUIREMENTS.—

(A) SAFE HARBOR RULE.—Paragraph (3) of section 414(r) of the 1986 Code is amended to read as follows:

"(3) SAFE HARBOR RULE.—

"(A) IN GENERAL.—The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

"(i) not less than one-half, and

"(ii) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of clause (i) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

"(B) DETERMINATION MAY BE BASED ON PRECEDING YEAR.—The requirements of subparagraph (A) shall be treated as met with respect to any line of business if such requirements were met with respect to such line of business for the preceding year and if—

"(i) no more than a de minimis number of employees were shifted to or from the line of business after the close of the preceding year, or

"(ii) the employees shifted to or from the line of business after the close of the preceding year contained a substantially proportional number of highly compensated employees."

(B) SEPARATE OPERATING UNITS.—Section 89(g)(5) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In applying section 414(r)(7) for purposes of this section, an operating unit shall be treated as in a separate geographic area from another unit if such units are at least 35 miles apart."

(3) COMPENSATION FOR GROUP-LIFE INSURANCE PLANS.—

(A) Paragraph (4) of section 89(j) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) COMPENSATION.—For purposes of applying this paragraph—

"(i) IN GENERAL.—Compensation shall be determined on any basis determined by the employer which does not discriminate in favor of highly compensated employees.

"(ii) SPECIAL RULES FOR 1989 AND 1990.—In the case of testing years beginning in 1989 or 1990, the employer

may elect to treat base compensation as compensation.”

(B) Subparagraph (A) of section 89(j)(4) of the 1986 Code is amended by striking out “(within the meaning of section 414(s))”.

(c) TRANSITIONAL PROVISIONS FOR PURPOSES OF SECTION 89.—

26 USC 89 note.

(1) TEMPORARY VALUATION RULES.—In the case of testing years beginning before the later of January 1, 1991, or the date 1 year after the Secretary of the Treasury or his delegate first issues such valuation rules as are necessary to apply the provisions of section 89 of the 1986 Code to health plans (or if later the effective date of such rules)—

(A) Section 89(g)(3)(B) of the 1986 Code shall not apply.

(B)(i) Except as provided in clause (ii), the value of coverage under a health plan for purposes of section 89 of the 1986 Code shall be determined in substantially the same manner as costs under a health plan are determined under section 4980B(f)(4) of the 1986 Code.

(ii) For purposes of determining whether an employer meets the requirements of subsections (d), (e), and (f) of section 89 of the 1986 Code, value under clause (i) may be determined under any other reasonable method selected by the employer.

(2) FORMER EMPLOYEES.—The amendments made by section 1151 of the Reform Act shall not apply to former employees who separated from service with the employer before January 1, 1989 (and were not reemployed on or after such date), and such former employees shall not be taken into account in determining whether the requirements of section 89 of the 1986 Code are met with respect to other former employees. The preceding sentence shall not apply to the extent that—

(A) the value of employer-provided benefits provided to any such former employee exceeds the value of such benefits which were provided under the terms of the plan as in effect on December 31, 1988, or

(B) the employer-provided benefits provided to such former employees are modified so as to discriminate in favor of such former employees who are highly compensated employees.

Any excess value under the preceding sentence shall be determined without regard to any increase required by Federal law, regulation or rule or any increase which is the same for employees separating on or before December 31, 1988, and employees separating after such date and which does not discriminate in favor of highly compensated employees who separated from service after December 31, 1988.

(3) WRITTEN PLAN REQUIREMENT.—The requirements of section 89(k)(1)(A) of the 1986 Code shall be treated as met with respect to any testing year beginning in 1989, if—

(A) the plan is in writing before the close of such year,

(B) the employees had reasonable notice of the plan's essential features on or before the beginning of such year, and

(C) the provisions of the written plan apply for the entire year.

(4) RULES TO BE PRESCRIBED BEFORE NOVEMBER 15, 1988.—Not later than November 15, 1988, the Secretary of the Treasury or

his delegate shall issue such rules as may be necessary to carry out the provisions of section 89 of the 1986 Code.

SC 89 note.

(d) EFFECTIVE DATES.—

(1) **SUBSECTION (a).—**The amendments made by subsection (a) shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986; except that the amendment made by subsection (a)(8) shall apply to testing years beginning after December 31, 1989.

(2) **SUBSECTION (b).—**The amendments made by subsection (b) shall apply to years beginning after December 31, 1986.

Subtitle D—Estate and Gift Taxes

SEC. 3031. ESTATE TAX VALUATION FREEZES.

(a) DEEMED GIFT.—

(1) **IN GENERAL.**—Paragraph (4) of section 2036(c) of the 1986 Code is amended to read as follows:

“(4) **TREATMENT OF CERTAIN TRANSFERS.—**

“(A) **IN GENERAL.**—For purposes of this subtitle, if, before the death of the original transferor—

“(i) the original transferor transfers all (or any portion of) the retained interest referred to in paragraph (1), or

“(ii) the original transferee transfers all (or any portion of) the transferred property referred to in paragraph (1) to a person who is not a member of the original transferor’s family,

the original transferor shall be treated as having made a transfer by gift of property to the original transferee equal to the paragraph (1) inclusion (or proportionate amount thereof). Proper adjustments shall be made in the amount treated as a gift by reason of the preceding sentence to take into account prior transfers to which this subparagraph applied and take into account any right of recovery (whether or not exercised) under section 2207B.

“(B) **COORDINATION WITH PARAGRAPH (1).**—In any case to which subparagraph (A) applies, nothing in paragraph (1) or section 2035(d)(2) shall require the inclusion of the transferred property (or proportionate amount thereof).

“(C) **SPECIAL RULE WHERE PROPERTY RETRANSFERRED.**—In the case of a transfer described in subparagraph (A)(ii) from the original transferee to the original transferor, the paragraph (1) inclusion (or proportion thereof) shall be reduced by the excess (if any) of—

“(i) the fair market value of the property so transferred, over

“(ii) the amount of the consideration paid by the original transferor in exchange for such property.

“(D) **DEFINITIONS.**—For purposes of this paragraph—

“(i) **ORIGINAL TRANSFEROR.**—The term ‘original transferor’ means the person making the transfer referred to in paragraph (1).

“(ii) **ORIGINAL TRANSFEEE.**—The term ‘original transferee’ means the person to whom the transfer referred to in paragraph (1) is made. Such term in-

cludes any member of the original transferor's family to whom the property is subsequently transferred.

“(iii) PARAGRAPH (1) INCLUSION.—The term ‘paragraph (1) inclusion’ means the amount which would have been included in the gross estate of the original transferor under subsection (a) by reason of paragraph (1) (determined without regard to sections 2032 and 2032A) if the original transferor died immediately before the transfer referred to in subparagraph (A). The amount determined under the preceding sentence shall be reduced by the amount (if any) of the taxable gift resulting from the transfer referred to in paragraph (1)(B).

“(iv) TRANSFERS TO INCLUDE TERMINATIONS, ETC.—Terminations, lapses, and other changes in any interest in property of the original transferor or original transferee shall be treated as transfers.

“(E) CONTINUING INTEREST IN TRANSFERRED PROPERTY MAY NOT BE RETAINED.—A transfer (to which subparagraph (A) would otherwise apply) shall not be taken into account under subparagraph (A) if the original transferor or the original transferee (as the case may be) retains a direct or indirect continuing interest in the property transferred in such transfer.”

(2) CROSS REFERENCE.—Subsection (d) of section 2501 of the 1986 Code is amended by adding at the end thereof the following:

“(3) For treatment of certain transfers related to estate tax valuation freezes as gifts to which this chapter applies, see section 2036(c)(4).”

(b) TREATMENT OF CERTAIN GRANTOR RETAINED INCOME TRUSTS.—Subsection (c) of section 2036 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(6) TREATMENT OF CERTAIN GRANTOR RETAINED INTEREST TRUSTS.—

“(A) IN GENERAL.—For purposes of this subsection, any retention of a qualified trust income interest shall be disregarded and the property with respect to which such interest exists shall be treated as held by the transferor while such income interest continues.

“(B) QUALIFIED TRUST INCOME INTEREST.—For purposes of subparagraph (A), the term ‘qualified trust income interest’ means any right to receive amounts determined solely by reference to the income from property held in trust if—

“(i) such right is for a period not exceeding 10 years,

“(ii) the person holding such right transferred the property to the trust, and

“(iii) such person is not a trustee of such trust.”

(b) EXCEPTIONS.—Subsection (c) of section 2036 of the 1986 Code is amended by adding at the end thereof the following new paragraphs:

“(7) EXCEPTIONS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to a transaction solely by reason of 1 or more of the following:

“(i) The receipt (or retention) of qualified debt.

“(ii) Except as provided in regulations, the existence of an agreement for the sale or lease of goods or other

property to be used in the enterprise or the providing of services and—

“(I) the agreement is an arm’s length agreement for fair market value, and

“(II) the agreement does not otherwise involve any change in interests in the enterprise.

“(iii) An option or other agreement to buy or sell property at the fair market value of such property as of the time the option is (or the rights under the agreement are) exercised.

“(B) LIMITATIONS.—

“(i) SERVICES PERFORMED AFTER TRANSFER.—In the case of compensation for services performed after the transfer referred to in paragraph (1)(B), clause (ii) of subparagraph (A) shall not apply if such services were performed under an agreement providing for the performance of services over a period greater than 3 years after the date of the transfer. For purposes of the preceding sentence, the term of any agreement includes any period for which the agreement may be extended at the option of the service provider.

“(ii) AMOUNTS MUST NOT BE CONTINGENT ON PROFITS, ETC.—Clause (ii) of subparagraph (A) shall not apply to any amount determined (in whole or in part) by reference to gross receipts, income, profits, or similar items of the enterprise.

“(C) QUALIFIED DEBT.—For purposes of this paragraph, except as provided in subparagraph (D), the term ‘qualified debt’ means any indebtedness if—

“(i) such indebtedness—

“(I) unconditionally requires the payment of a sum certain in money in 1 or more fixed payments on specified dates, and

“(II) has a fixed maturity date not more than 15 years from the date of issue (or, in the case of indebtedness secured by real property, not more than 30 years from the date of issue).

“(ii) the only other amount payable under such indebtedness is interest determined at—

“(I) a fixed rate, or

“(II) a rate which bears a fixed relationship to a specified market interest rate,

(iii) the interest payment dates are fixed,

“(iv) such indebtedness is not by its terms subordinated to the claims of general creditors,

“(v) except in a case where such indebtedness is in default as to interest or principal, such indebtedness does not grant voting rights to the person to whom the debt is owed or place any limitation on the exercise of voting rights by others, and

“(vi) such indebtedness—

“(I) is not (directly or indirectly) convertible into an interest in the enterprise which would not be qualified debt, and

“(II) does not otherwise grant any right to acquire such an interest.

The requirement of clause (i)(I) that the principal be payable on 1 or more specified dates and the requirement of clause (i)(II) shall not apply to indebtedness payable on demand if such indebtedness is issued in return for cash to be used to meet normal business needs of the enterprise.

“(D) SPECIAL RULE FOR STARTUP DEBT.—

“(i) **IN GENERAL.**—For purposes of this paragraph, the term ‘qualified debt’ includes any qualified startup debt.

“(ii) **QUALIFIED STARTUP DEBT.**—For purposes of clause (i), the term ‘qualified startup debt’ means any indebtedness if—

“(I) such indebtedness unconditionally requires the payment of a sum certain in money,

“(II) such indebtedness was received in exchange for cash to be used in any enterprise involving the active conduct of a trade or business,

“(III) the person to whom the indebtedness is owed has not at any time (whether before, on, or after the exchange referred to in subclause (II)) transferred any property (including goodwill) which was not cash to the enterprise or transferred customers or other business opportunities to the enterprise,

“(IV) the person to whom the indebtedness is owed has not at any time (whether before, on, or after the exchange referred to in subclause (II)) held any interest in the enterprise (including an interest as an officer, director, or employee) which was not qualified startup debt,

“(V) any person who (but for subparagraph (A)(i)) would have been an original transferee (as defined in paragraph (4)(C)) participates in the active management (as defined in section 2032A(e)(12)) of the enterprise, and

“(VI) such indebtedness meets the requirements of clauses (v) and (vi) of subparagraph (C).

“(8) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including such regulations as may be necessary or appropriate to prevent avoidance of the purposes of this subsection through distributions or otherwise.”

(d) **TREATMENT OF SPOUSE.**—Subparagraph (C) of section 2036(c)(3) of the 1986 Code is amended by striking out “An individual” and inserting in lieu thereof “Except as provided in regulations, an individual”.

(e) **CLARIFICATION OF RETENTION TEST.**—Subparagraph (B) of section 2036(c)(1) of the 1986 Code is amended by striking out “while” and all that follows down through the comma at the end of such subparagraph and inserting in lieu thereof “while retaining an interest in the income of, or rights in, the enterprise,”.

(f) RIGHT OF RECOVERY.—

(1) **IN GENERAL.**—Subchapter C of chapter 11 of the 1986 Code is amended by inserting after section 2207A the following new section:

"SEC. 2207B. RIGHT OF RECOVERY WHERE DECEDENT RETAINED INTEREST.**"(a) ESTATE TAX.—**

"(1) IN GENERAL.—If any part of the gross estate on which tax has been paid consists of the value of property included in the gross estate by reason of section 2036 (relating to transfers with retained life estate), the decedent's estate shall be entitled to recover from the person receiving the property the amount which bears the same ratio to the total tax under this chapter which has been paid as—

"(A) the value of such property, bears to

"(B) the taxable estate.

"(2) DECEDENT MAY OTHERWISE DIRECT BY WILL.—Paragraph (1) shall not apply if the decedent otherwise directs in a provision of his will (or a revocable trust) specifically referring to this section.

"(b) GIFT TAX.—If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2036(c)(4), such person shall be entitled to recover from the original transferee (as defined in section 2036(c)(4)(C)(ii)) the amount which bears the same ratio to the total tax for such year under chapter 12 as—

"(1) the value of such property for purposes of chapter 12, bears to

"(2) the total amount of the taxable gifts for such year.

"(c) MORE THAN ONE RECIPIENT.—For purposes of this section, if there is more than 1 person receiving the property, the right of recovery shall be against each such person.

"(d) PENALTIES AND INTEREST.—In the case of penalties and interest attributable to the additional taxes described in subsections (a) and (b), rules similar to the rules of subsections (a), (b), and (c) shall apply.

"(e) NO RIGHT OF RECOVERY AGAINST CHARITABLE REMAINDER TRUSTS.—No person shall be entitled to recover any amount by reason of this section from a trust to which section 664 applies (determined without regard to this section)."

(2) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 11 of the 1986 Code is amended by inserting after the item relating to section 2207A the following new item:

"Sec. 2207B. Right of recovery where decedent retained interest."

(g) TREATMENT OF CONSIDERATION.—

(1) Paragraph (2) of section 2036(c) of the 1986 Code is amended to read as follows:

"(2) SPECIAL RULES FOR CONSIDERATION FURNISHED BY FAMILY MEMBERS.—

"(A) IN GENERAL.—The exception contained in subsection (a) for a bona fide sale shall not apply to a transfer described in paragraph (1) if such transfer is to a member of the transferor's family.

"(B) TREATMENT OF CONSIDERATION.—

(i) IN GENERAL.—In the case of a transfer described in paragraph (1), if—

"(I) a member of the transferor's family provides consideration in money or money's worth for such member's interest in the enterprise, and

“(II) it is established to the satisfaction of the Secretary that such consideration originally belonged to such member and was never received or acquired (directly or indirectly) by such member from the transferor for less than full and adequate consideration in money or money’s worth, paragraph (1) shall not apply to the applicable fraction of the portion of the enterprise which would (but for this subparagraph) have been included in the gross estate of the transferor by reason of this subsection (determined without regard to any reduction under paragraph (5) for the value of the retained interest).

“(ii) **APPLICABLE FRACTION.**—For purposes of clause (i), the applicable fraction is a fraction—

“(I) the numerator of which is the amount of the consideration referred to in clause (i), and

“(II) the denominator of which is the value of the portion referred to in clause (i) immediately after the transfer described in paragraph (1).

“(iii) **SECTION 2043 NOT TO APPLY.**—The provisions of this subparagraph shall be in lieu of any adjustment under section 2043.”

(2) Paragraph (5) of section 2036(c) of the 1986 Code is amended to read as follows:

“(5) **ADJUSTMENTS.**—Appropriate adjustments shall be made in the amount included in the gross estate by reason of this subsection for the value of the retained interest, extraordinary distributions, and changes in the capital structure of the enterprise after the transfer described in paragraph (1).

1) EFFECTIVE DATE.—

(1) **IN GENERAL.**—Except as provided in this subsection, any amendment made by this section shall take effect as if included in the provisions of the Revenue Act of 1987 to which such amendment relates.

(2) **SUBSECTION (a).**—The amendments made by subsection (a) shall apply in cases where the transfer referred to in section 2036(c)(1)(B) of the 1986 Code is on or after June 21, 1988.

(3) **SUBSECTION (f).**—If an amount is included in the gross estate of a decedent under section 2036 of the 1986 Code other than solely by reason of section 2036(c) of the 1986 Code, the amendments made by subsection (f) shall apply to such amount only with respect to property transferred after the date of the enactment of this Act.

(4) **CORRECTION PERIOD.**—If section 2036(c)(1) of the 1986 Code would (but for this paragraph) apply to any interest arising from a transaction entered into during the period beginning after December 17, 1987, and ending before January 1, 1990, such section shall not apply to such interest if—

(A) during such period, such actions are taken as are necessary to have such section 2036(c)(1) not apply to such transaction (and any such interest), or

(B) the original transferor and his spouse on January 1, 1990 (or, if earlier, the date of the original transferor’s death), does not hold any interest in the enterprise involved.

26 USC 2036
note.

(5) **CLARIFICATION OF EFFECTIVE DATE.**—For purposes of section 10402(b) of the Revenue Act of 1987, with respect to property transferred on or before December 17, 1987—

(A) any failure to exercise a right of conversion,

(B) any failure to pay dividends, and

(c) failures to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer.

Subtitle E—Indian Fishing Rights

SEC. 3041. FEDERAL TAX TREATMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS SECURED BY TREATY, ETC.

(a) **GENERAL RULES.**—Subchapter C of chapter 80 of the 1986 Code (relating to provisions affecting more than one subtitle) is amended by adding at the end thereof the following new section:

“SEC. 7873. INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.

“(a) IN GENERAL.—

“(1) **INCOME AND SELF-EMPLOYMENT TAXES.**—No tax shall be imposed by subtitle A on income derived—

“(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

“(B) by a qualified Indian entity,
from a fishing rights-related activity of such tribe.

“(2) **EMPLOYMENT TAXES.**—No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

“(b) DEFINITIONS.—For purposes of this section—

“(1) **FISHING RIGHTS-RELATED ACTIVITY.**—The term ‘fishing rights-related activity’ means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

“(2) **RECOGNIZED FISHING RIGHTS.**—The term ‘recognized fishing rights’ means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

“(3) QUALIFIED INDIAN ENTITY.—

“(A) **IN GENERAL.**—The term ‘qualified Indian entity’ means, with respect to an Indian tribe, any entity if—

“(i) such entity is engaged in a fishing rights-related activity of such tribe,

“(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

“(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or

more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

“(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

“(B) QUALIFIED INDIAN TRIBE.—For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

“(c) SPECIAL RULES.—

“(1) DISTRIBUTIONS FROM QUALIFIED INDIAN ENTITY.—For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

“(2) DE MINIMIS UNRELATED AMOUNTS MAY BE EXCLUDED.—If, but for this paragraph, all but a de minimis amount—

“(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

“(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a), then the entire amount shall be entitled to the benefits of such paragraph.”

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter C is amended by adding at the end thereof the following new item:

“Sec. 7873. Income derived by Indians from exercise of fishing rights.”

SEC. 3042. STATE TAX TREATMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS SECURED BY TREATY, ETC.

Section 2079 of the Revised Statutes (25 U.S.C. 71) is amended by adding at the end thereof the following new sentence: “Such treaties, and any Executive orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive order, or Act of Congress if section 7873 of the Internal Revenue Code of 1986 does not permit a like Federal tax to be imposed on such income.”

SEC. 3043. CONFORMING AMENDMENTS RELATING TO COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.

(a) EXCLUSION FROM WAGES OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.—Section 209 of the Social Security Act (42 U.S.C. 409) is amended—

- (1) in subsection (r), by striking out “or” at the end;
- (2) in subsection (s), by striking out the period and inserting in lieu thereof “; or”; and
- (3) by inserting after subsection (s) the following new subsection:

“(t) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights).”

(b) EXCLUSION FROM NET EARNINGS FROM SELF-EMPLOYMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.—Section 211(a) of such Act (42 U.S.C. 411(a)) is amended—

- (1) in paragraph (12), by striking out “and” at the end;
- (2) in paragraph (13), by striking out the period and inserting in lieu thereof “; and”; and
- (3) by inserting after paragraph (13) the following new paragraph:

“(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights).”

(c) CROSS-REFERENCES IN SECA AND FICA TO APPLICABLE INDIAN FISHING RIGHTS PROVISIONS.—

(1) SECA.—Subsection (a) of section 1402 of the 1986 Code (relating to net earnings from self-employment) is amended by striking out “and” at the end of paragraph (13), by striking out the period at the end of paragraph (14) and inserting in lieu thereof “; and”, and by inserting after paragraph (14) the following new paragraph:

“(15) in the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply.”

(2) FICA.—Subsection (a) of section 3121 of the 1986 Code (relating to wages) is amended by striking out “or” at the end of paragraph (19), by striking out the period at the end of paragraph (20) and inserting in lieu thereof “; or”, and by inserting after paragraph (20) the following new paragraph:

“(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of fishing rights).”

26 USC 7873
note.

SEC. 3044. EFFECTIVE DATE; NO INFERENCE CREATED.

(a) **EFFECTIVE DATE.**—The amendments made by this subtitle shall apply to all periods beginning before, on, or after the date of the enactment of this Act.

(b) **NO INFERENCE CREATED.**—Nothing in the amendments made by this subtitle shall create any inference as to the existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of March 17, 1988, by any treaty, law, or Executive Order.

TITLE IV—EXTENSIONS AND MODIFICATIONS OF EXPIRING TAX PROVISIONS

SEC. 4001. EXTENSION AND MODIFICATION OF EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) **EXTENSION.**—Subsection (d) of section 127 of the 1986 Code (relating to educational assistance programs) is amended by striking out “December 31, 1987” and inserting in lieu thereof “December 31, 1988”.

(b) **RESTRICTIONS RELATING TO EDUCATION AT THE GRADUATE LEVEL.**—

(1) **IN GENERAL.**—Paragraph (1) of section 127(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: “The term ‘educational assistance’ also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.”

(2) **SPECIAL RULE FOR TEACHING AND RESEARCH ASSISTANTS.**—Subsection (d) of section 117 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) **SPECIAL RULES FOR TEACHING AND RESEARCH ASSISTANTS.**—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase ‘(below the graduate level)’.”

(c) **EFFECTIVE DATES.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

26 USC 117 note.

SEC. 4002. EXTENSION AND MODIFICATION OF EXCLUSION OF AMOUNTS RECEIVED UNDER GROUP LEGAL SERVICES PLANS.

(a) **EXTENSION.**—Section 120(e) of the 1986 Code is amended by striking out “1987” and inserting in lieu thereof “1988”.

(b) **LIMITATION ON VALUE OF INSURANCE PROTECTION WHICH MAY BE EXCLUDED.**—

(1) **IN GENERAL.**—Section 120(a) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds \$70.”

(2) **CONFORMING AMENDMENT.**—Subparagraph (A) of section 125(e)(2) of the 1986 Code is amended by inserting “or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)” after “section 79”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years ending after December 31, 1987.

26 USC 120 note.

SEC. 4003. CARRYOVER OF POST-1987 LOW-INCOME HOUSING CREDIT DOLLAR AMOUNTS PERMITTED.

(a) **IN GENERAL.**—Section 42(h)(1) of the 1986 Code (relating to housing credit dollar amount may not be carried over, etc.), as

amended by section 1002(1)(14)(A) of this Act, is amended by adding at the end thereof the following new subparagraph:

“(E) EXCEPTION WHERE 10 PERCENT OF COST INCURRED.—

“(i) IN GENERAL.—An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

“(ii) QUALIFIED BUILDING.—For purposes of clause (i), the term ‘qualified building’ means any building which is part of a project if the taxpayer’s basis in such project (as of the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer’s reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.”

(b) CONFORMING AMENDMENTS.—

(1) Section 42(h)(1)(B) of the 1986 Code, as amended by section 1002 of this Act, is amended by striking out “(C) or (D)” and inserting in lieu thereof “(C), (D), or (E)”.

26 USC 469 note.

(2) Paragraph (3) of section 501(c) of the Reform Act is hereby repealed.

(3) Subsection (n) of section 42 of the 1986 Code, as amended by title I of this Act, is amended to read as follows:

“(n) TERMINATION.—The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989.”

26 USC 42 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts allocated in calendar years after 1987.

SEC. 4004. SIMPLIFICATION OF RULE WHERE PARTNERSHIP HOLDS QUALIFIED LOW-INCOME BUILDING.

(a) IN GENERAL.—Subparagraph (B) of section 42(j)(5) of the 1986 Code, as amended by title I of this Act, is amended to read as follows:

“(B) PARTNERSHIPS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.”

26 USC 42 note.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 252 of the Reform Act.

(2) PERIOD FOR ELECTION.—The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act.

SEC. 4005. PROVISIONS RELATING TO MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES.**(a) EXTENSION OF AUTHORITY TO ISSUE BONDS AND CERTIFICATES.—**

(1) Subparagraph (B) of section 143(a)(1) of the 1986 Code (relating to termination) is amended by striking out “December 31, 1988” each place it appears and inserting in lieu thereof “December 31, 1989”.

(2) Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages), as amended by section 1013(a)(26) of this Act, is amended by striking out “1988” and inserting in lieu thereof “1989”.

(b) CALCULATION OF INCOME LIMITS FOR QUALIFIED MORTGAGE BOND FINANCED HOMES IN HIGH HOUSING COST AREAS.—Section 143(f) of the 1986 Code (relating to income requirements) is amended by adding at the end thereof the following new paragraph:

“(5) **ADJUSTMENT OF INCOME REQUIREMENT BASED ON RELATION OF HIGH HOUSING COSTS TO INCOME.—**

“(A) **IN GENERAL.—**If the residence (for which financing is provided under the issue) is located in a high housing cost area and the limitation determined under this paragraph is greater than the limitation otherwise applicable under paragraph (1), there shall be substituted for the income limitation in paragraph (1), a limitation equal to the percentage determined under subparagraph (B) of the area median gross income for such area.

“(B) **INCOME REQUIREMENTS FOR RESIDENCES IN HIGH HOUSING COST AREA.—**The percentage determined under this subparagraph for a residence located in a high housing cost area is the percentage (not greater than 140 percent) equal to the product of—

“(I) 115 percent, and

“(II) the amount by which the housing cost/income ratio for such area exceeds 0.2.

“(C) **HIGH HOUSING COST AREAS.—**For purposes of this paragraph, the term ‘high housing cost area’ means any statistical area for which the housing cost/income ratio is greater than 1.2.

“(D) **HOUSING COST/INCOME RATIO.—**For purposes of this paragraph—

“(i) **IN GENERAL.—**The term ‘housing cost/income ratio’ means, with respect to any statistical area, the number determined by dividing—

“(I) the applicable housing price ratio for such area, by

“(II) the ratio which the area median gross income for such area bears to the median gross income for the United States.

“(ii) **APPLICABLE HOUSING PRICE RATIO.—**For purposes of clause (i), the applicable housing price ratio for any area is the new housing price ratio or the existing housing price ratio, whichever results in the housing cost/income ratio being closer to 1.

“(iii) **NEW HOUSING PRICE RATIO.—**The new housing price ratio for any area is the ratio which—

“(I) the average area purchase price (as defined in subsection (e)(2)) for residences described in subsection (e)(3)(A) which are located in such area bears to

“(II) the average purchase price (determined in accordance with the principles of subsection (e)(2)) for residences so described which are located in the United States.

“(iv) EXISTING HOUSING PRICE RATIO.—The existing housing price ratio for any area is the ratio determined in accordance with clause (iii) but with respect to residences described in subsection (e)(3)(B).”

(c) DETERMINATIONS OF FAMILY INCOME TO BE BASED ON FAMILY SIZE.—Subsection (f) of section 143 of the 1986 Code (relating to income requirements) is further amended by adding at the end thereof the following new paragraph:

“(6) ADJUSTMENT TO INCOME REQUIREMENTS BASED ON FAMILY SIZE.—In the case of a mortgagor having a family of fewer than 3 individuals, the preceding provisions of this subsection shall be applied by substituting—

“(A) ‘100 percent’ for ‘115 percent’ each place it appears, and

“(B) ‘120 percent’ for ‘140 percent’ each place it appears.”

(d) QUALIFIED MORTGAGE BONDS SUBJECT TO ARBITRAGE REBATE RULES APPLICABLE TO OTHER TAX-EXEMPT BONDS.—

(1) Paragraph (1) of section 143(g) of the 1986 Code (relating to requirements related to arbitrage) is amended—

(A) by striking out “paragraphs (2) and (3) of this subsection” and inserting in lieu thereof “paragraph (2) of this subsection and, in the case of an issue described in subsection (b)(1), such issue also meets the requirements of paragraph (3) of this subsection”, and

(B) by striking out “(other than subsection (f) thereof)”.

(2) Paragraph (1) of section 148(f) of the 1986 Code is amended by striking out “qualified mortgage bond or”.

(e) LOANS PROVIDED THROUGH QUALIFIED MORTGAGE ISSUE MUST ORIGINATE WITHIN 42 MONTHS OF DATE OF ISSUE.—Paragraph (2) of section 143(a) of the 1986 Code (defining qualified mortgage issue) is amended by adding at the end thereof the following new subparagraph:

“(D) PROCEEDS MUST BE USED WITHIN 42 MONTHS OF DATE OF ISSUANCE.—

“(i) IN GENERAL.—Except as otherwise provided in this subparagraph, an issue shall not meet the requirement of subparagraph (A)(i) unless—

“(I) all proceeds of the issue required to be used to finance owner-occupied residences are so used within the 42-month period beginning on the date of issuance of the issue (or, in the case of a refunding bond, within the 42-month period beginning on the date of issuance of the original bond) or, to the extent not so used within such period, are used within such period to redeem bonds which are part of such issue, and

“(II) no portion of the proceeds of the issue are used to make or finance any loan (other than a loan which is a nonpurpose investment within the

meaning of section 148(f)(6)(A)) after the close of such period.

“(ii) EXCEPTION.—Clause (i) (and clause (iv) of subparagraph (A)) shall not be construed to require amounts of less than \$250,000 to be used to redeem bonds. The Secretary may by regulation treat related issues as 1 issue for purposes of the preceding sentence.”

(f) REPAYMENTS OF FINANCING PROVIDED BY A QUALIFIED MORTGAGE ISSUE MUST BE USED TO REDEEM BONDS.—Subparagraph (A) of section 143(a)(2) of the 1986 Code is amended by striking out “and” at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof “, and”, and by adding at the end thereof the following:

“(iv) except as provided in subparagraph (D)(ii), repayments of principal on financing provided by the issue are used not later than the close of the 1st semiannual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds which are part of such issue.

Clause (iv) shall not apply to amounts received within 10 years after the date of issuance of the issue (or, in the case of refunding bond, the date of issuance of the original bond).”

(g) RECAPTURE OF PORTION OF FEDERAL SUBSIDY FROM USE OF MORTGAGE BONDS AND MORTGAGE CREDIT CERTIFICATES.—

(1) IN GENERAL.—Section 143 of the 1986 Code (relating to mortgage revenue bonds) is amended by adding at the end thereof the following new subsection:

“(m) RECAPTURE OF PORTION OF FEDERAL SUBSIDY FROM USE OF QUALIFIED MORTGAGE BONDS AND MORTGAGE CREDIT CERTIFICATES.—

“(1) IN GENERAL.—If, during the taxable year, any taxpayer disposes of an interest in a residence with respect to which there is or was any federally-subsidized indebtedness for the payment of which the taxpayer was liable in whole or part, then the taxpayer's tax imposed by this chapter for such taxable year shall be increased by the recapture amount with respect to such indebtedness.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

“(A) any disposition by reason of death, and

“(B) any disposition which is more than 10 years after the testing date.

“(3) FEDERALLY-SUBSIDIZED INDEBTEDNESS.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘federally-subsidized indebtedness’ means any indebtedness if—

“(i) financing for the indebtedness was provided in whole or part from the proceeds of any tax-exempt qualified mortgage bond, or

“(ii) any credit was allowed under section 25 (relating to interest on certain home mortgages) to the taxpayer for interest paid or incurred on such indebtedness.

“(B) EXCEPTION FOR HOME IMPROVEMENT LOANS.—Such term shall not include any indebtedness to the extent such indebtedness is federally-subsidized indebtedness solely by reason of being a qualified home improvement loan (as defined in subsection (k)(4)).

“(4) RECAPTURE AMOUNT.—For purposes of this subsection—

“(A) IN GENERAL.—The recapture amount with respect to any indebtedness is the amount equal to the product of—

“(i) the federally-subsidized amount with respect to the indebtedness, and

“(ii) the holding period percentage.

“(B) FEDERALLY-SUBSIDIZED AMOUNT.—The federally-subsidized amount with respect to any indebtedness is the amount equal to 6.25 percent of the highest principal amount of the indebtedness for which the taxpayer was liable.

“(C) HOLDING PERIOD PERCENTAGE.—

“(i) DISPOSITIONS DURING 1ST 5 YEARS.—If the disposition of the taxpayer’s interest in the residence occurs during the 5-year period beginning on the testing date, the holding period percentage is the percentage determined by dividing the number of full months during which the requirements of subparagraph (D) were met by 60.

“(ii) DISPOSITIONS DURING 2D 5 YEARS.—If the disposition of the taxpayer’s interest in the residence occurs during the 5-year period following the 5-year period described in clause (i), the holding period percentage is the percentage determined by dividing—

“(I) the excess of 120 over the number of full months during which such requirements were met by

“(II) 60.

“(iii) RETIREMENTS OF INDEBTEDNESS.—If the federally-subsidized indebtedness is completely repaid during any month of the 10-year period beginning on the testing date, the holding period percentage for succeeding months shall be determined by reducing ratably over the remainder of such period (or, if lesser, 5 years) the holding period percentage which would have been determined under this subparagraph had the taxpayer disposed of his interest in the residence on the date of the repayment.

“(D) TESTING DATE.—The term ‘testing date’ means the earliest date on which all of the following requirements are met:

“(i) The indebtedness is federally-subsidized indebtedness.

“(ii) The taxpayer is liable in whole or part for payment of the indebtedness.

“(5) REDUCTION OF RECAPTURE AMOUNT IF TAXPAYER MEETS CERTAIN INCOME LIMITATIONS.—

“(A) IN GENERAL.—The recapture amount which would (but for this paragraph) apply with respect to any disposition during a taxable year shall be reduced (but not below zero) by 2 percent of such amount for each \$100 by which adjusted qualifying income exceeds the modified adjusted gross income of the taxpayer for such year.

“(B) ADJUSTED QUALIFYING INCOME.—For purposes of this paragraph, the term ‘adjusted qualifying income’ means the amount equal to the sum of—

“(i) \$5,000, plus

“(ii) the product of—

“(I) the highest family income which (as of the date the financing was provided) would have met the requirement of subsection (f) with respect to the residence, and

“(II) the percentage equal to the sum of 100 percent plus 5 percent for each full year during the period beginning on such date and ending on the date of the disposition.

For purposes of clause (ii)(I), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition.

“(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term ‘modified adjusted gross income’ means adjusted gross income—

“(i) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is excluded from gross income under section 103, and

“(ii) decreased by the amount of gain (if any) included in gross income of the taxpayer by reason of the disposition to which this subsection applies.

“(6) LIMITATION ON RECAPTURE AMOUNT BASED ON GAIN REALIZED.—

“(A) IN GENERAL.—In no event shall the recapture amount of the taxpayer with respect to any indebtedness exceed 50 percent of the gain (if any) on the disposition of the taxpayer's interest in the residence. For purposes of the preceding sentence, gain shall be taken into account whether or not recognized, and the adjusted basis of the taxpayer's interest in the residence shall be determined without regard to sections 1033(b) and 1034(e) for purposes of determining gain.

“(B) DISPOSITIONS OTHER THAN SALES, EXCHANGES, AND INVOLUNTARY CONVERSIONS.—In the case of a disposition other than a sale, exchange, or involuntary conversion, gain shall be determined as if the interest had been sold for its fair market value.

“(C) INVOLUNTARY CONVERSIONS RESULTING FROM CASUALTIES.—In the case of property which (as a result of its destruction in whole or in part by fire, storm, or other casualty) is compulsorily or involuntarily converted, paragraph (1) shall not apply to such conversion if the taxpayer purchases (during the period specified in section 1033(a)(2)(B)) property for use as his principal residence on the site of the converted property. For purposes of subparagraph (A), the adjusted basis of the taxpayer in the residence shall not be adjusted for any gain or loss on a conversion to which this subparagraph applies.

“(7) ISSUER TO INFORM MORTGAGOR OF FEDERALLY-SUBSIDIZED AMOUNT AND FAMILY INCOME LIMITS.—The issuer of the issue which provided the federally-subsidized indebtedness to the mortgagor shall—

“(A) at the time of settlement, provide a written statement informing the mortgagor of the potential recapture under this subsection, and

"(B) not later than 90 days after the date such indebtedness is provided, provide a written statement to the mortgagor specifying—

"(i) the federally-subsidized amount with respect to such indebtedness, and

"(ii) the amounts described in paragraph (5)(B)(ii) for each category of family size for each year of the 10-year period beginning on the date the financing was provided.

"(8) SPECIAL RULES.—

"(A) NO BASIS ADJUSTMENT.—No adjustment shall be made to the basis of any property for the increase in tax under this subsection.

"(B) SPECIAL RULE WHERE 2 OR MORE PERSONS HOLD INTERESTS IN RESIDENCE.—Except as provided in subparagraph (C) and in regulations prescribed by the Secretary, if 2 or more persons hold interests in any residence and are jointly liable for the federally-subsidized indebtedness, the recapture amount shall be determined separately with respect to their respective interests in the residence.

"(C) TRANSFERS TO SPOUSES AND FORMER SPOUSES.—Paragraph (1) shall not apply to any transfer on which no gain or loss is recognized under section 1041. In any such case, the transferee shall be treated under this subsection in the same manner as the transferor would have been treated had such transfer not occurred.

"(D) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection, including regulations dealing with dispositions of partial interests in a residence."

(2) ISSUER INFORMATION REQUIREMENT.—

(A) Subparagraph (A) of section 143(a)(2) of the 1986 Code is amended by striking out "and (i)" and inserting in lieu thereof "(i), and (m)(7)".

(B) Subparagraph (C) of section 143(a)(2) of the 1986 Code is amended by striking out "and (h)" and inserting in lieu thereof ", (h), and (m)(7)".

(3) BROKER REPORTING.—Subsection (e) of section 6045 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) WHETHER SELLER'S FINANCING WAS FEDERALLY-SUBSIDIZED.—In the case of a real estate transaction involving a residence, the real estate broker shall specify on the return under subsection (a) and the statement under subsection (b) whether or not the financing (if any) of the seller was federally-subsidized indebtedness (as defined in section 143(m)(3))."

(4) NO CREDITS AGAINST TAX.—Paragraph (2) of section 26(b) of the 1986 Code (relating to limitation based on tax liability; definition of tax liability), as amended by title I of this Act, is amended by striking out "and" at the end of subparagraph (K), by striking out the period at the end of subparagraph (L) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(M) section 143(m) (relating to recapture of portion of federal subsidy from use of mortgage bonds and mortgage credit certificates)."

(5) **RECAPTURE TAX NOT INCLUDED IN ESTIMATED TAXES.**—Paragraph (1) of section 6654(f) of the 1986 Code (relating to failure by individual to pay estimated income tax) is amended by inserting “(other than any increase in such tax by reason of section 143(m))” after “chapter 1”.

(6) **AUTHORITY TO CHANGE PREPAYMENT ASSUMPTIONS FOR ARBITRAGE RESTRICTIONS.**—Clause (iv) of section 143(g)(2)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“The Secretary may by regulation adjust the mortgage prepayment rate otherwise used in determining the effective rate of interest to the extent the Secretary determines that such an adjustment is appropriate by reason of the impact of subsection (m).”

(7) **CROSS REFERENCE.**—Section 25 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(j) **RECAPTURE OF PORTION OF FEDERAL SUBSIDY FROM USE OF MORTGAGE CREDIT CERTIFICATES.**—

“For provisions increasing the tax imposed by this chapter to recapture a portion of the Federal subsidy from the use of mortgage credit certificates, see section 143(m).”

(h) **EFFECTIVE DATES.**—

26 USC 143 note.

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the amendments made by this section shall apply to bonds issued, and nonissued bond amounts elected, after December 31, 1988.

(2) **SPECIAL RULES RELATING TO CERTAIN REQUIREMENTS AND REFUNDING BONDS.**—In the case of a bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before January 1, 1989—

(A) the amendments made by subsections (b) and (c) shall apply to financing provided after the date of issuance of the refunding issue, and

(B) the amendment made by subsection (f) shall apply to payments (including on loans made before such date of issuance) received on or after such date of issuance.

(3) **SUBSECTION (g).**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the amendments made by subsection (g) shall apply to financing provided, and mortgage credit certificates issued, after December 31, 1990.

(B) **EXCEPTION.**—The amendments made by subsection (g) shall not apply to financing provided pursuant to a binding contract (entered into before June 23, 1988) with a homebuilder, lender, or mortgagor if the bonds (the proceeds of which are used to provide such financing) are issued—

(i) before June 23, 1988, or

(ii) before August 1, 1988, pursuant to a written application (made before July 1, 1988) for State bond volume authority.

(i) **STUDY OF RECAPTURE PROVISIONS.**—The Comptroller General of the United States shall conduct a study of section 143(m) of the 1986 Code (as added by this section) and of alternatives to accomplish the purposes of such section. A report of such study shall be submitted not later than July 1, 1990, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

26 USC 143 note.

Reports.

SEC. 4006. EXTENSION OF CERTAIN BUSINESS ENERGY CREDITS.

Each of the following provisions in the table under section 46(b)(2)(A) of the 1986 Code are amended by striking out "December 31, 1988" and inserting in lieu thereof "December 31, 1989":

- (1) The item relating to the 10 percent credit in clause (viii).
- (2) The item relating to the 10 percent credit in clause (ix).
- (3) Clause (x).

SEC. 4007. EXTENSION OF CREDIT FOR INCREASING RESEARCH ACTIVITIES.

(a) **EXTENSION.**—Subsection (h) of section 41 of the 1986 Code (relating to credit for increasing research activities) is amended—

- (1) by striking out "December 31, 1988" each place it appears and inserting in lieu thereof "December 31, 1989", and
- (2) by striking out "January 1, 1989" each place it appears and inserting in lieu thereof "January 1, 1990".

(b) **GAO STUDY.**—

(1) **IN GENERAL.**—The Comptroller General of the United States shall conduct a study of the credit provided by section 41 of the 1986 Code.

(2) **REPORT.**—The report of the study under paragraph (1) shall be submitted not later than December 31, 1989, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 4008. DENIAL OF DEDUCTION FOR 50 PERCENT AMOUNTS ALLOWED AS A RESEARCH CREDIT.

(a) **IN GENERAL.**—Section 280C of the 1986 Code (relating to certain expenses for which credits are allowable) is amended by adding at the end thereof the following new subsection:

"(c) **CREDIT FOR INCREASING RESEARCH ACTIVITIES.**—

"(1) **IN GENERAL.**—No deduction shall be allowed for that portion of the qualified research expenses (as defined in section 41(b)) or basic research expenses (as defined in section 41(e)(2)) otherwise allowable as a deduction for the taxable year which is equal to 50 percent of the amount of the credit determined for such taxable year under section 41(a).

"(2) **SIMILAR RULE WHERE TAXPAYER CAPITALIZES RATHER THAN DEDUCTS EXPENSES.**—If—

"(A) 50 percent of the amount of the credit determined for the taxable year under section 41(a)(1), exceeds

"(B) the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses (determined without regard to paragraph (1)), the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

"(3) **CONTROLLED GROUPS.**—Paragraph (3) of subsection (b) shall apply for purposes of this subsection."

(b) **RESEARCH CREDIT TO BE ELECTIVE.**—

(1) **IN GENERAL.**—Section 41 of the 1986 Code is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) **ELECTION TO HAVE RESEARCH CREDIT NOT APPLY.**—

"(1) **IN GENERAL.**—A taxpayer may elect to have this section not apply for any taxable year.

such income in determining the amount of taxable income from sources outside the United States.

(3) The remaining portion of qualified research and experimental expenditures (not allocated under paragraphs (1) and (2)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall be at least 30 percent of the amount which would be so apportioned on the basis of gross sales.

(b) **QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.**—For purposes of this section, the term “qualified research and experimental expenditures” means amounts which are research and experimental expenditures within the meaning of section 174 of the 1986 Code. For purposes of this subsection, rules similar to the rules of subsection (c) of section 174 of the 1986 Code shall apply.

(c) **SPECIAL RULES FOR EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN SPACE, ETC.**—

(1) **IN GENERAL.**—Any qualified research and experimental expenditures described in paragraph (2)—

(A) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

(B) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

(2) **DESCRIPTION OF EXPENDITURES.**—For purposes of paragraph (1), qualified research and experimental expenditures are described in this paragraph if such expenditures are attributable to activities conducted—

(A) in space,

(B) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

(C) in Antarctica.

(d) **AFFILIATED GROUP.**—

(1) Except as provided in paragraph (2), the allocation and apportionment required by subsection (a) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of section 864 of the 1986 Code) were a single corporation.

(2) For purposes of the allocation and apportionment required by subsection (a)—

(A) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E) of the 1986 Code); and

(B) dividends from an electing corporation, shall not be taken into account, except that this paragraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) of the 1986 Code is not in effect.

(3) The qualified research and experimental expenditures taken into account for purposes of subsection (a) shall be adjusted to reflect the amount of such expenditures included in

computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I) of the 1986 Code).

(4) The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by paragraph (3).

(5) Paragraph (6) of section 864(e) of the 1986 Code shall not apply to qualified research and experimental expenditures.

(e) YEARS TO WHICH SECTION APPLIES.—

(1) **IN GENERAL.**—Except as provided in this subsection, this section shall apply to the taxpayer's 1st taxable year beginning after August 1, 1987.

(2) **REDUCTION IN AMOUNTS TO WHICH SECTION APPLIES.**—Notwithstanding paragraph (1), this section shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in paragraph (1) which bears the same ratio to the total amount of such expenditures as—

(A) the lesser of 4 months or the number of months in the taxable year, bears to

(B) the number of months in the taxable year.

SEC. 4010. EXTENSION AND MODIFICATION OF TARGETED JOBS CREDIT.

(a) **2-YEAR EXTENSION.**—Paragraph (4) of section 51(c) of the 1986 Code (relating to termination) is amended by striking out “December 31, 1988” and inserting in lieu thereof “December 31, 1989”.

(b) **EXTENSION OF AUTHORIZATION.**—Paragraph (2) of section 261(f) of the Economic Recovery Tax Act of 1981 is amended by striking out “and 1988” and inserting in lieu thereof “1988, and 1989”.

26 USC 51 note.

(c) **ECONOMICALLY DISADVANTAGED YOUTH STATUS RESTRICTED TO INDIVIDUALS UNDER AGE 23.**—

(1) **IN GENERAL.**—Subparagraph (B) of section 51(d)(3) of the 1986 Code is amended by striking out “age 25” and inserting in lieu thereof “age 23”.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to individuals who begin work for the employer after December 31, 1988.

26 USC 51 note.

(d) **REDUCTION IN PERCENTAGE OF CREDIT FOR SUMMER YOUTH EMPLOYEES.**—

(1) **IN GENERAL.**—Subparagraph (B) of section 51(d)(12) of the 1986 Code is amended by striking out clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to individuals who begin work for the employer after December 31, 1988.

26 USC 51 note.

SEC. 4011. TREATMENT OF PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES UNDER 2-PERCENT FLOOR.

(a) **IN GENERAL.**—Subsection (c) of section 67 of the 1986 Code, as amended by section 1001(f) of this Act, is amended to read as follows:

“(c) **DISALLOWANCE OF INDIRECT DEDUCTION THROUGH PASS-THRU ENTITY.**—

“(1) **IN GENERAL.**—The Secretary shall prescribe regulations which prohibit the indirect deduction through pass-thru entities of amounts which are not allowable as a deduction if paid or incurred directly by an individual and which contain such

Regulations.

reporting requirements as may be necessary to carry out the purposes of this subsection.

“(2) **TREATMENT OF PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES.**—

“(A) **IN GENERAL.**—Paragraph (1) shall not apply with respect to any publicly offered regulated investment company.

“(B) **PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES.**—For purposes of this subsection—

“(i) **IN GENERAL.**—The term ‘publicly offered regulated investment company’ means a regulated investment company the shares of which are—

“(I) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)),

“(II) regularly traded on an established securities market, or

“(III) held by or for no fewer than 500 persons at all times during the taxable year.

“(ii) **SECRETARY MAY REDUCE 500 PERSON REQUIREMENT.**—The Secretary may by regulation decrease the minimum shareholder requirement of clause (i)(III) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares.

“(3) **TREATMENT OF CERTAIN OTHER ENTITIES.**—Paragraph (1) shall not apply—

“(A) with respect to cooperatives and real estate investment trusts, and

“(B) except as provided in regulations, with respect to estates and trusts.

“(4) **TERMINATION.**—This subsection shall not apply to any taxable year beginning after December 31, 1989.”

26 USC 67 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 4012. EXTENSION AND MODIFICATIONS OF PROVISIONS RELATING TO FINANCIAL INSTITUTIONS.

(a) **1-YEAR EXTENSION.**—

26 USC 368 note.

(1) **REORGANIZATIONS.**—Paragraph (1) of section 904(c) of the Reform Act is amended by striking out “December 31, 1988” and inserting in lieu thereof “December 31, 1989”.

26 USC 597 note.

(2) **FSLIC FINANCIAL ASSISTANCE.**—Paragraph (2)(A) of section 904(c) of the Reform Act is amended by striking out “December 31, 1988” and inserting in lieu thereof “December 31, 1989”.

(3) **NET OPERATING LOSS RULES.**—The last sentence of section 382(l)(5)(F) of the 1986 Code is amended by striking out “December 31, 1988” and inserting in lieu thereof “December 31, 1989”.

(b) **APPLICATION OF CERTAIN PROVISIONS TO BANKS.**—

(1) **SPECIAL RULES FOR REORGANIZATIONS AND NET OPERATING LOSSES.**—

(A) Section 368(a)(3)(D) of the 1986 Code (as in effect before the amendment made by section 904(a) of the Reform Act) is amended by adding at the end thereof the following new clauses:

“(iv) In the case of a financial institution to which section 585 applies—

“(I) the term ‘title 11 or similar case’ means only a case in which the applicable authority (which shall be treated as the court in such case) makes the certification described in subclause (II), and

“(II) clause (ii) shall apply to such institution, except that for purposes of clause (ii)(III), the applicable authority must certify that the grounds set forth in such clause (modified in such manner as the Secretary determines necessary because such institution is not an institution to which section 593 applies) exist with respect to such transferor or will exist in the near future in the absence of action by the applicable authority.

For purposes of this clause, the term ‘applicable authority’ means the Comptroller of the Currency or the Federal Deposit Insurance Corporation, or if neither has the supervisory authority with respect to the transfer, the equivalent State authority.

“(v) For purposes of this subparagraph, in applying section 593, the determination as to whether a corporation is a domestic building and loan association shall be made without regard to section 7701(a)(19)(C).”

(B) Subclause (I) of section 382(l)(5)(F)(iii) of the 1986 Code is amended by inserting “(as modified by section 368(a)(3)(D)(iv))” after “section 368(a)(3)(D)(ii)”.

(C)(i) The amendment made by subparagraph (A) shall apply to acquisitions after the date of the enactment of this Act and before January 1, 1990.

26 USC 368 note.

(ii) The amendment made by subparagraph (B) shall apply to any ownership change occurring after the date of the enactment of this Act and before January 1, 1990.

26 USC 382 note.

(2) ASSISTANCE PAYMENTS.—

(A) Section 597(a) of the 1986 Code (as in effect before the amendments made by section 904(b) of the Reform Act) is amended by adding at the end thereof the following new sentence: “Gross income of a bank does not include any amount of money or other property received from the Federal Deposit Insurance Corporation pursuant to sections 13(c), 15(c)(1), and 15(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f) and 1823 (c)(1) and (c)(2)), regardless of whether any note or other instrument is issued in exchange therefor.”

(B) Section 597(b) of the 1986 Code, as amended by subsection (c)(1), is amended by adding at the end thereof the following new subsection:

“(d) DOMESTIC BUILDING AND LOAN ASSOCIATION.—For purposes of this section, the term ‘domestic building and loan association’ has the meaning given such term by section 7701(a)(19) without regard to subparagraph (C) thereof.”

(C) Section 597(b) of the 1986 Code (as so in effect) is amended by inserting “or bank” after “association”.

(D)(i) The heading for section 597 of the 1986 Code (as so in effect) is amended by inserting “or FDIC” after “FSLIC”.

(ii) The item relating to section 597 in part II of subchapter H of chapter 1 of the 1986 Code (as so in effect) is amended by inserting "or FDIC" after "FSLIC".

USC 597 note.

(E) The amendments made by this paragraph shall apply to any transfer—

(i) after the date of the enactment of this Act, and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring on or before such date of enactment, and

(ii) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after such date of enactment and before January 1, 1990.

(c) CERTAIN TAX ATTRIBUTES REDUCED BY 50 PERCENT OF FINANCIAL ASSISTANCE OF FSLIC AND FDIC; APPLICATION OF SECTION 265.—

(1) REDUCTION IN TAX ATTRIBUTES.—Section 597 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(c) REDUCTION OF TAX ATTRIBUTES BY 50 PERCENT OF AMOUNTS EXCLUDABLE UNDER SUBSECTION (a).—

“(1) IN GENERAL.—50 percent of any amount excludable under subsection (a) for any taxable year shall be applied to reduce the tax attributes of the taxpayer as provided in paragraph (2).

“(2) TAX ATTRIBUTES REDUCED; ORDER OF REDUCTION.—The reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

“(A) NOL.—Any pre-assistance net operating loss for the taxable year.

“(B) INTEREST.—The amount of any interest with respect to which a deduction is allowable for the taxable year.

“(C) BUILT-IN PORTFOLIO LOSSES.—Recognized built-in portfolio losses for the taxable year.

“(3) PRE-ASSISTANCE NET OPERATING LOSS.—For purposes of paragraph (2)(A)—

“(A) IN GENERAL.—The pre-assistance net operating loss shall be determined in the same manner as a pre-change loss under section 382(d), except that—

“(i) the applicable financial institution shall be treated as the old loss corporation, and

“(ii) the determination date shall be substituted for the change date.

“(B) ORDERING RULE.—The reduction under paragraph (2)(A) shall be made in the carryovers in the order in which carryovers are taken into account under this chapter for the taxable year.

“(4) RECOGNIZED BUILT-IN PORTFOLIO LOSSES.—For purposes of paragraph (2)(C), recognized built-in portfolio losses shall be determined in the same manner as recognized built-in losses under section 382(h), except that—

“(A) the only assets taken into account shall be—

“(i) the loan portfolio,

“(ii) marketable securities (within the meaning of section 453(f)(2)), and

“(iii) property described in section 595(a),

“(B) the rules of clauses (i) and (ii) of paragraph (3)(A) shall apply,

“(C) there shall be no limit on the number of years in the recognition period, and

“(D) section 382(h) shall be applied without regard to paragraph (3)(B) thereof.

“(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) APPLICABLE FINANCIAL INSTITUTION.—The term ‘applicable financial institution’ means the domestic building and loan association or bank the financial condition of which was determined by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation to require the financial assistance described in subsection (a).

“(B) DETERMINATION DATE.—The term ‘determination date’ means the date of the determination under subparagraph (A). Except as provided by the Secretary, any subsequent revision or modification of such determination shall be treated as made on the original determination date.

“(C) TAXABLE ASSET ACQUISITIONS.—

“(i) IN GENERAL.—In the case of any acquisition of the assets of any applicable financial institution to which section 381 does not apply—

“(I) paragraph (1) shall not apply to any amounts excludable under subsection (a) which are payments made at the time of the acquisition to the person acquiring such assets, and

“(II) rights to receive future payments excludable under subsection (a) in connection with the acquisition shall be treated as provided in clause (ii).

“(ii) TREATMENT OF FUTURE PAYMENTS.—

“(I) IN GENERAL.—Rights to receive future payments described in clause (i)(II) shall be treated as assets to which basis is allocated.

“(II) RECOVERY OF BASIS.—Any basis allocated under subclause (I) shall be recovered in such manner as the Secretary may provide, but in no event shall the amount recovered for any taxable year beginning before the taxable year in which the rights expire exceed the aggregate payments received with respect to such rights for all taxable years reduced by the amount of basis recovered with respect to such rights in preceding taxable years.

“(III) APPLICATION OF PARAGRAPH (1).—Paragraph (1) shall apply to payments described in subclause (I) in a taxable year only to the extent such payments exceed the amount of basis recovered in such taxable year.

“(D) TREATMENT OF REPAYMENTS.—If a taxpayer repays an amount to which paragraph (1) applied in a preceding taxable year, there shall be allowed as a deduction for the taxable year of repayment an amount equal to the reduction in tax attributes under paragraph (1) attributable to the amount repaid.

“(E) CARRYOVERS.—If 50 percent of the amount excludable under subsection (a) for any taxable year exceeds the

amount of the tax attributes described in paragraph (2) for such taxable year, then, for purposes of this subsection, the amount excludable under subsection (a) for the succeeding taxable year shall be increased by an amount equal to twice the amount of such excess.

“(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection.”

26 USC 597 note.

(2) APPLICATION OF SECTION 265.—Subparagraph (B) of section 904(c)(2) of the Reform Act is amended by striking out “Section 265(a)(1)” and inserting in lieu thereof “Section 265”.

26 USC 597 note.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any transfer—

(A) after December 31, 1988, and before January 1, 1990, unless such transfer is pursuant to an acquisition occurring before January 1, 1989, and

(B) after December 31, 1989, if such transfer is pursuant to an acquisition occurring after December 31, 1988, and before January 1, 1990.

In the case of a taxpayer to which the amendments made by subsection (b)(1) apply, subparagraphs (A) and (B) shall be applied by substituting “the date of the enactment of this Act” for “December 31, 1988”.

TITLE V—REVENUE INCREASE PROVISIONS

Subtitle A—Corporate Estimated Taxes

SEC. 5001. CORPORATE ESTIMATED TAX PAYMENTS.

(a) GENERAL RULE.—Paragraph (1) of section 6655(e) of the 1986 Code (relating to annualization) is amended by striking out the last sentence.

26 USC 6655
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to installments required to be made after December 31, 1988.

Subtitle B—Insurance Provisions

SEC. 5011. LIMITATION ON UNREASONABLE MORTALITY AND OTHER EXPENSE CHARGES UNDER SECTION 7702.

(a) GENERAL RULE.—Subparagraph (B) of section 7702(c)(3) of the 1986 Code (relating to guideline premium requirements) is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

“(i) reasonable mortality charges which meet the requirements (if any) prescribed in regulations and which (except as provided in regulations) do not exceed the mortality charges specified in the prevailing commissioners’ standard tables (as defined in section 807(d)(5)) as of the time the contract is issued,

“(ii) any reasonable charges (other than mortality charges) which (on the basis of the company’s experi-

ence, if any, with respect to similar contracts) are reasonably expected to be actually paid, and”.

(b) **SPECIAL RULES.**—Paragraph (3) of section 7702(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(D) **SPECIAL RULES FOR SUBPARAGRAPH (B)(ii).**—

“(i) **CHARGES NOT SPECIFIED IN THE CONTRACT.**—If any charge is not specified in the contract, the amount taken into account under subparagraph (B)(ii) for such charge shall be zero.

“(ii) **NEW COMPANIES, ETC.**—If any company does not have adequate experience for purposes of the determination under subparagraph (B)(ii), to the extent provided in regulations, such determination shall be made on the basis of the industry-wide experience.”

(c) **INTERIM RULES.**—

(1) **REGULATIONS.**—Not later than January 1, 1990, the Secretary of the Treasury (or his delegate) shall issue regulations under section 7702(c)(3)(B)(i) of the 1986 Code (as amended by subsection (a)).

(2) **STANDARDS BEFORE REGULATIONS TAKE EFFECT.**—In the case of any contract to which the amendments made by this section apply and which is issued before the effective date of the regulations required under paragraph (1), mortality charges which do not differ materially from the charges actually expected to be imposed by the company (taking into account any relevant characteristic of the insured of which the company is aware) shall be treated as meeting the requirements of clause (i) of section 7702(c)(3)(B) of the 1986 Code (as amended by subsection (a)).

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to contracts entered into on or after October 21, 1988.

26 USC 7702
note.

26 USC 7702
note.

SEC. 5012. TREATMENT OF MODIFIED ENDOWMENT CONTRACTS.

(a) **DISTRIBUTION RULES.**—

(1) **IN GENERAL.**—Subsection (e) of section 72 of the 1986 Code (relating to amounts not received as annuities) is amended by adding at the end thereof the following new paragraph:

“(10) **TREATMENT OF MODIFIED ENDOWMENT CONTRACTS.**—

“(A) **IN GENERAL.**—Notwithstanding paragraph (5)(C), in the case of any modified endowment contract (as defined in section 7702A)—

“(i) paragraphs (2)(B) and (4)(A) shall apply, and

“(ii) in applying paragraph (4)(A), ‘any person’ shall be substituted for ‘an individual’.

“(B) **TREATMENT OF CERTAIN BURIAL CONTRACTS.**—Notwithstanding subparagraph (A), paragraph (4)(A) shall not apply to any assignment (or pledge) of a modified endowment contract if such assignment (or pledge) is solely to cover the payment of expenses referred to in section 7702(e)(2)(C)(iii) and if the maximum death benefit under such contract does not exceed \$25,000.”

(2) **TECHNICAL AMENDMENT.**—Subparagraph (C) of section 72(e)(5) of the 1986 Code is amended by striking out “Except to the extent” and inserting in lieu thereof “Except as provided in paragraph (10) and except to the extent”.

(b) **ADDITIONAL TAX.**—

(1) **IN GENERAL.**—Section 72 of the 1986 Code (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (v) as subsection (w) and by inserting after subsection (u) the following new subsection:

“(v) 10-PERCENT ADDITIONAL TAX FOR TAXABLE DISTRIBUTIONS FROM MODIFIED ENDOWMENT CONTRACTS.—

“(1) IMPOSITION OF ADDITIONAL TAX.—If any taxpayer receives any amount under a modified endowment contract (as defined in section 7702A), the taxpayer’s tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income.

“(2) SUBSECTION NOT TO APPLY TO CERTAIN DISTRIBUTIONS.—Paragraph (1) shall not apply to any distribution—

“(A) made on or after the date on which the taxpayer attains age 59½,

“(B) which is attributable to the taxpayer’s becoming disabled (within the meaning of subsection (m)(7)), or

“(C) which is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and his beneficiary.”

(2) TECHNICAL AMENDMENT.—Subparagraph (C) of section 26(b)(2) of the 1986 Code is amended by striking out “or (q)” and inserting in lieu thereof “(q), or (v)”.

(c) MODIFIED ENDOWMENT CONTRACT DEFINED.—

(1) IN GENERAL.—Chapter 79 of the 1986 Code is amended by inserting after section 7702 the following new section:

“SEC. 7702A. MODIFIED ENDOWMENT CONTRACT DEFINED.

“(a) GENERAL RULE.—For purposes of section 72, the term ‘modified endowment contract’ means any contract meeting the requirements of section 7702—

“(1) which—

“(A) is entered into on or after June 21, 1988, and

“(B) fails to meet the 7-pay test of subsection (b), or

“(2) which is received in exchange for a contract described in paragraph (1).

“(b) 7-PAY TEST.—For purposes of subsection (a), a contract fails to meet the 7-pay test of this subsection if the accumulated amount paid under the contract at any time during the 1st 7 contract years exceeds the sum of the net level premiums which would have been paid on or before such time if the contract provided for paid-up future benefits after the payment of 7 level annual premiums.

“(c) COMPUTATIONAL RULES.—

“(1) IN GENERAL.—Except as provided in this subsection, the determination under subsection (b) of the 7 level annual premiums shall be made—

“(A) as of the time the contract is issued, and

“(B) by applying the rules of section 7702(b)(2) and of section 7702(e) (other than paragraph (2)(C) thereof), except that the death benefit provided for the 1st contract year shall be deemed to be provided until the maturity date without regard to any scheduled reduction after the 1st 7 contract years.

“(2) REDUCTION IN BENEFITS DURING 1ST 7 YEARS.—

“(A) IN GENERAL.—If there is a reduction in benefits under the contract within the 1st 7 contract years, this section shall be applied as if the contract had originally been issued at the reduced benefit level.

“(B) REDUCTIONS ATTRIBUTABLE TO NONPAYMENT OF PREMIUMS.—Any reduction in benefits attributable to the nonpayment of premiums due under the contract shall not be taken into account under subparagraph (A) if the benefits are reinstated within 90 days after the reduction in such benefits.

“(3) TREATMENT OF MATERIAL CHANGES.—

“(A) IN GENERAL.—If there is a material change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination under this section, for purposes of this section—

“(i) such contract shall be treated as a new contract entered into on the day on which such material change takes effect, and

“(ii) appropriate adjustments shall be made in determining whether such contract meets the 7-pay test of subsection (b) to take into account the cash surrender value under the contract.

“(B) TREATMENT OF CERTAIN INCREASES IN FUTURE BENEFITS.—For purposes of subparagraph (A), the term ‘material change’ includes any increase in future benefits under the contract.

Such term shall not include—

“(i) any increase which is attributable to the payment of premiums necessary to fund the lowest level of future benefits payable in the 1st 7 contract years (determined after taking into account death benefit increases described in subparagraph (A) or (B) of section 7702(e)(2)) or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, and

“(ii) to the extent provided in regulations, any cost-of-living increase based on an established broad-based index if such increase is funded ratably over the remaining life of the the contract.

“(4) SPECIAL RULE FOR CONTRACTS WITH DEATH BENEFITS UNDER \$10,000.—In the case of a contract—

“(A) which provides an initial death benefit of \$10,000 or less, and

“(B) which requires at least 7 nondecreasing annual premium payments,

each of the 7 level annual premiums determined under subsection (b) (without regard to this paragraph) shall be increased by \$75. For purposes of this paragraph, the contract involved and all contracts previously issued to the same insurer by the same company shall be treated as one contract.

“(5) REGULATORY AUTHORITY FOR CERTAIN COLLECTION EXPENSES.—The Secretary may by regulations prescribe rules for taking into account expenses solely attributable to the collection of premiums paid more frequently than annually.

“(d) DISTRIBUTIONS AFFECTED.—If a contract fails to meet the 7-pay test of subsection (b), such contract shall be treated as failing to meet such requirements only in the case of—

“(1) distributions during the contract year in which the failure takes effect and during any subsequent contract year, and

“(2) under regulations prescribed by the Secretary, distributions (not described in paragraph (1)) in anticipation of such failure.

For purposes of the preceding sentence, any distribution which is made within 2 years before the failure to meet the 7-pay test shall be treated as made in anticipation of such failure.

“(e) DEFINITIONS.—For purposes of this section—

“(1) AMOUNT PAID.—

“(A) IN GENERAL.—The term ‘amount paid’ means—

“(i) the premiums paid under the contract, reduced by

“(ii) amounts to which section 72(e) applies (determined without regard to paragraph (4)(A) thereof) but not including amounts includible in gross income.

“(B) TREATMENT OF CERTAIN PREMIUMS RETURNED.—If, in order to comply with the requirements of subsection (b), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of such contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such contract year.

“(C) INTEREST RETURNED INCLUDIBLE IN GROSS INCOME.—Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

“(2) CONTRACT YEAR.—The term ‘contract year’ means the 12-month period beginning with the 1st month for which the contract is in effect, and each 12-month period beginning with the corresponding month in subsequent calendar years.

“(3) OTHER TERMS.—Except as otherwise provided in this section, terms used in this section shall have the same meaning as when used in section 7702.”

(2) CLERICAL AMENDMENT.—The table of sections for chapter 79 of the 1986 Code is amended by inserting after the item relating to section 7702 the following new item:

“Sec. 7702A. Modified endowment contract defined.”

(d) OTHER MODIFICATIONS.—

(1) TREATMENT OF LOANS.—Subparagraph (A) of section 72(e)(4) of the 1986 Code (relating to loans treated as distributions) is amended by adding at the end thereof the following new sentence: “The preceding sentence shall not apply for purposes of determining investment in the contract, except that the investment in the contract shall be increased by any amount included in gross income by reason of the amount treated as received under the preceding sentence.”

(2) ANTI-ABUSE RULES.—Subsection (e) of section 72 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(11) ANTI-ABUSE RULES.—

“(A) IN GENERAL.—For purposes of determining the amount includible in gross income under this subsection—

“(i) all modified endowment contracts issued by the same company to the same policyholder during any 12-month period shall be treated as 1 modified endowment contract, and

“(ii) all annuity contracts issued by the same company to the same policyholder during any 12-month period shall be treated as 1 annuity contract.

“(B) REGULATORY AUTHORITY.—The Secretary may by regulations prescribe such additional rules as may be necessary or appropriate to prevent avoidance of the purposes of this subsection through serial purchases of contracts or otherwise.”

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to contracts entered into on or after June 21, 1988.

(2) SPECIAL RULE WHERE DEATH BENEFIT INCREASES BY MORE THAN \$150,000.—If the death benefit under the contract increases by more than \$150,000 over the death benefit under the contract in effect on October 20, 1988, the rules of section 7702A(c)(3) of the 1986 Code (as added by this section) shall apply in determining whether such contract is issued on or after June 21, 1988. The preceding sentence shall not apply in the case of a contract which, as of June 21, 1988, required at least 7 level annual premium payments and under which the policyholder continues to make level annual premium payments over the life of the contract.

(3) CERTAIN OTHER MATERIAL CHANGES TAKEN INTO ACCOUNT.—A contract entered into before June 21, 1988, shall be treated as entered into after such date if—

(A) on or after June 21, 1988, the death benefit under the contract is increased (or a qualified additional benefit is increased or added) and before June 21, 1988, the owner of the contract did not have a unilateral right under the contract to obtain such increase or addition without providing additional evidence of insurability, or

(B) the contract is converted after June 20, 1988, from a term life insurance contract to a life insurance contract providing coverage other than term life insurance coverage without regard to any right of the owner of the contract to such conversion.

(4) CERTAIN EXCHANGES PERMITTED.—In the case of a modified endowment contract which—

(A) required at least 7 annual level premium payments,

(B) is entered into after June 20, 1988, and before the date of the enactment of this Act, and

(C) is exchanged within 3 months after such date of enactment for a life insurance contract which meets the requirements of section 7702A(b),

the contract which is received in exchange for such contract shall not be treated as a modified endowment contract if the taxpayer elects, notwithstanding section 1035 of the 1986 Code, to recognize gain on such exchange.

26 USC 7702A
note.

(5) **SPECIAL RULE FOR ANNUITY CONTRACTS.**—In the case of annuity contracts, the amendments made by subsection (d) shall apply to contracts entered into after October 21, 1988.

SEC. 5013. VALUATION OF GROUP-TERM LIFE INSURANCE.

(a) **GENERAL RULE.**—Subsection (c) of section 79 of the 1986 Code (relating to the determination of the cost of insurance) is amended by striking out the last sentence.

26 USC 79 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1988.

SEC. 5014. STUDY.

(a) **GENERAL RULE.**—The Secretary of the Treasury and the Comptroller General of the United States shall each conduct a study on—

(1) the effectiveness of the revised tax treatment of life insurance and annuity products in preventing the sale of life insurance primarily for investment purposes, and

(2) the policy justification for, and the practical implications of, the present-law treatment of the earnings on the cash surrender value of life insurance and annuity contracts in light of the reforms made by the Tax Reform Act of 1986.

(b) **REPORT.**—Not later than June 1, 1989, the Secretary of the Treasury and the Comptroller General of the United States shall each submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subsection (a), together with such recommendations as they may deem advisable.

Subtitle C—Loss Transfer Rules for Alaska Native Corporations

26 USC 1504
note.

SEC. 5021. REPEAL OF RULES PERMITTING LOSS TRANSFERS BY ALASKA NATIVE CORPORATIONS.

(a) **GENERAL RULE.**—Nothing in section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986)—

(1) shall allow any loss (or credit) of any corporation which arises after April 26, 1988, to be used to offset the income (or tax) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended, or

(2) shall allow any loss (or credit) of any corporation which arises on or before such date to be used to offset disqualified income (or tax attributable to such income) of another corporation if such use would not be allowable without regard to such section 60(b)(5) as so amended.

(b) **EXCEPTION FOR EXISTING CONTRACTS.**—

(1) **IN GENERAL.**—Subsection (a) shall not apply to any loss (or credit) of any corporation if—

(A) such corporation was in existence on April 26, 1988, and

(B) such loss (or credit) is used to offset income assigned (or attributable to property contributed) pursuant to a binding contract entered into before July 26, 1988.

(2) **\$40,000,000 LIMITATION.**—The aggregate amount of losses (and the deduction equivalent of credits as determined in the same manner as under section 469(j)(5) of the 1986 Code) to which paragraph (1) applies with respect to any corporation shall not exceed \$40,000,000. For purposes of this paragraph, a Native Corporation and all other corporations all of the stock of which is owned directly by such corporation shall be treated as 1 corporation.

(3) **SPECIAL RULE FOR CORPORATIONS UNDER TITLE 11.**—In the case of a corporation which on April 26, 1988, was under the jurisdiction of a Federal district court under title 11 of the United States Code—

(A) paragraph (1)(B) shall be applied by substituting the date 1 year after the date of the enactment of this Act for “July 26, 1988”,

(B) paragraph (1) shall not apply to any loss or credit which arises on or after the date 1 year after the date of the enactment of this Act, and

(C) paragraph (2) shall be applied by substituting “\$99,000,000” for “\$40,000,000”.

(c) SPECIAL ADMINISTRATIVE RULES.—

(1) **NOTICE TO NATIVE CORPORATIONS OF PROPOSED TAX ADJUSTMENTS.**—Notwithstanding section 6103 of the 1986 Code, the Secretary of the Treasury or his delegate shall notify a Native Corporation or its designated representative of any proposed adjustment—

(A) of the tax liability of a taxpayer which has contracted with the Native Corporation (or other corporation all of the stock of which is owned directly by the Native Corporation) for the use of losses of such Native Corporation (or such other corporation), and

(B) which is attributable to an asserted overstatement of losses by, or misassignment of income (or income attributable to property contributed) to, an affiliated group of which the Native Corporation (or such other corporation) is a member.

Such notice shall only include information with respect to the transaction between the taxpayer and the Native Corporation.

(2) RIGHTS OF NATIVE CORPORATION.—

(A) **IN GENERAL.**—If a Native Corporation receives a notice under paragraph (1), the Native Corporation shall have the right to—

(i) submit to the Secretary of the Treasury or his delegate a written statement regarding the proposed adjustment, and

(ii) meet with the Secretary of the Treasury or his delegate with respect to such proposed adjustment. The Secretary of the Treasury or his delegate may discuss such proposed adjustment with the Native Corporation or its designated representative.

(B) **EXTENSION OF STATUTE OF LIMITATIONS.**—Subparagraph (A) shall not apply if the Secretary of the Treasury or his delegate determines that an extension of the statute of limitation is necessary to permit the participation described in subparagraph (A) and the taxpayer and the Secretary or his delegate have not agreed to such extension.

(3) **JUDICIAL PROCEEDINGS.**—In the case of any proceeding in a Federal court or the United States Tax Court involving a proposed adjustment under paragraph (1), the Native Corporation, subject to the rules of such court, may file an amicus brief concerning such adjustment.

(4) **FAILURES.**—For purposes of the 1986 Code, any failure by the Secretary of the Treasury or his delegate to comply with the provisions of this subsection shall not affect the validity of the determination of the Internal Revenue Service of any adjustment of tax liability of any taxpayer described in paragraph (1).

(d) **DISQUALIFIED INCOME DEFINED.**—For purposes of subsection (a), the term “disqualified income” means any income assigned (or attributable to property contributed) after April 26, 1988, by a person who is not a Native Corporation or a corporation all the stock of which is owned directly by a Native Corporation.

(e) **BASIS DETERMINATION.**—For purposes of determining basis for Federal tax purposes, no provision in any law (whether enacted before, on, or after the date of the enactment of this Act) shall affect the date on which the transfer to the Native Corporation is made. The preceding sentence shall apply to all taxable years whether beginning before, on, or after such date of enactment.

Subtitle D—Estate and Gift Tax Provisions

SEC. 5031. VALUATION TABLES.

(a) **GENERAL RULE.**—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

“SEC. 7520. VALUATION TABLES.

“(a) **GENERAL RULE.**—For purposes of this title, the value of any annuity, any interest for life or a term of years, or any remainder or reversionary interest shall be determined—

“(1) under tables prescribed by the Secretary, and

“(2) by using an interest rate (rounded to the nearest $\frac{1}{100}$ ths of 1 percent) equal to 120 percent of the Federal midterm rate in effect under section 1274(d)(1) for the month in which the valuation date falls.

If an income, estate, or gift tax charitable contribution is allowable for any part of the property transferred, the taxpayer may elect to use such Federal midterm rate for either of the 2 months preceding the month in which the valuation date falls for purposes of paragraph (2). In the case of transfers of more than 1 interest in the same property with respect to which the taxpayer may use the same rate under paragraph (2), the taxpayer shall use the same rate with respect to each such interest.

“(b) **SECTION NOT TO APPLY FOR CERTAIN PURPOSES.**—This section shall not apply for purposes of part I of subchapter D of chapter 1 or any other provision specified in regulations.

“(c) **TABLES.**—

“(1) **IN GENERAL.**—The tables prescribed by the Secretary for purposes of subsection (a) shall contain valuation factors for a series of interest rate categories.

“(2) **INITIAL TABLE.**—Not later than the day 3 months after the date of the enactment of this section, the Secretary shall prescribe initial tables for purposes of subsection (a). Such tables

may be based on the same mortality experience as used for purposes of section 2031 on the date of the enactment of this section.

“(3) **REVISION FOR RECENT MORTALITY CHARGES.**—Not later than December 31, 1989, the Secretary shall revise the initial tables prescribed for purposes of subsection (a) to take into account the most recent mortality experience available as of the time of such revision. Such tables shall be revised not less frequently than once each 10 years thereafter to take into account the most recent mortality experience available as of the time of the revision.

“(d) **VALUATION DATE.**—For purposes of this section, the term ‘valuation date’ means the date as of which the valuation is made.

“(e) **TABLES TO INCLUDE FORMULAS.**—For purposes of this section, the term ‘tables’ includes formulas.”

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter 77 of the 1986 Code is amended by adding at the end thereof the following new item:

“Sec. 7520. Valuation tables.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply in cases where the date as of which the valuation is to be made occurs on or after the 1st day of the 6th calendar month beginning after the date of the enactment of this Act.

26 USC 7520
note.

SEC. 5032. RATE SCHEDULE FOR TAX ON ESTATES OF NONRESIDENTS NOT CITIZENS.

(a) **GENERAL RULE.**—Subsection (b) of section 2101 of the 1986 Code (relating to computation of tax) is amended by striking out “a tentative tax computed in accordance with the rate schedule set forth in subsection (d)” each place it appears and inserting in lieu thereof “a tentative tax computed under section 2001(c)”.

(b) **AMOUNT OF UNIFIED CREDIT.**—

(1) **IN GENERAL.**—Subsection (c) of section 2102 of the 1986 Code is amended—

(A) by striking out “\$3,600” in paragraphs (1) and (2)(A) and inserting in lieu thereof “\$13,000”, and

(B) by striking out “\$15,075” in paragraph (2)(B) and inserting in lieu thereof “\$46,800”.

(2) **COORDINATION WITH TREATIES, ETC.**—Paragraph (3) of section 2102(c) of the 1986 Code is amended to read as follows:

“(3) **SPECIAL RULES.**—

“(A) **COORDINATION WITH TREATIES.**—To the extent required under any treaty obligation of the United States, the credit allowed under this subsection shall be equal to the amount which bears the same ratio to \$192,800 as the value of the part of the decedent’s gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

“(B) **COORDINATION WITH GIFT TAX UNIFIED CREDIT.**—If a credit has been allowed under section 2505 with respect to any gift made by the decedent, each dollar amount contained in paragraph (1) or (2) or subparagraph (A) of this paragraph (whichever applies) shall be reduced by the amount so allowed.”

(c) **TECHNICAL AMENDMENT.**—Subsection (d) of section 2101 of the 1986 Code is hereby repealed.

26 USC 2101
note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 5033. DISALLOWANCE OF MARITAL DEDUCTION WHERE SPOUSE IS NOT CITIZEN OF UNITED STATES.

(a) ESTATE TAX.—

(1) **IN GENERAL.**—Section 2056 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(d) DISALLOWANCE OF MARITAL DEDUCTION WHERE SURVIVING SPOUSE NOT UNITED STATES CITIZEN.—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), if the surviving spouse of the decedent is not a citizen of the United States—

“(A) no deduction shall be allowed under subsection (a), and

“(B) section 2040(b) shall not apply.

“(2) MARITAL DEDUCTION ALLOWED FOR CERTAIN TRANSFERS IN TRUST.—

“(A) **IN GENERAL.**—Paragraph (1) shall not apply to any property passing to the surviving spouse in a qualified domestic trust.

“(B) **PROPERTY PASSING OUTSIDE OF PROBATE ESTATE.**—If any property passes from the decedent to the surviving spouse of the decedent outside of the decedent's probate estate, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if such property is transferred to such a trust before the day on which the return of the tax imposed by section 2001 is made.

“(3) ALLOWANCE OF CREDIT TO CERTAIN SPOUSES.—If—

“(A) property passes to the surviving spouse of the decedent (hereinafter in this paragraph referred to as the ‘first decedent’),

“(B) without regard to this subsection, a deduction would be allowable under subsection (a) with respect to such property, and

“(C) such surviving spouse dies and the estate of such surviving spouse is subject to the tax imposed by section 2001,

the Federal estate tax paid (or treated as paid under section 2056A(b)(6)) by the first decedent with respect to such property shall be allowed as a credit under section 2013 to the estate of such surviving spouse and the amount of such credit shall be determined under such section without regard to when the first decedent died.”

(2) **TREATMENT OF QUALIFIED DOMESTIC TRUST.**—Part IV of subchapter A of chapter 11 of the 1986 Code is amended by inserting after section 2056 the following new section:

“SEC. 2056A. QUALIFIED DOMESTIC TRUST.

“(a) QUALIFIED DOMESTIC TRUST DEFINED.—For purposes of this section and section 2056(d), the term ‘qualified domestic trust’ means, with respect to any decedent, any trust if—

“(1) the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations,

“(2) the surviving spouse of the decedent is entitled to all the income from the property in such trust, payable annually or at more frequent intervals,

“(3) such trust meets such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by subsection (b), and

“(4) an election under this section by the executor of the decedent applies to such trust.

“(b) TAX TREATMENT OF TRUST.—

“(1) IMPOSITION OF ESTATE TAX.—There is hereby imposed an estate tax on—

“(A) any distribution before the date of the death of the surviving spouse from a qualified domestic trust other than a distribution of income required under subsection (a)(2), and

“(B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

“(2) AMOUNT OF TAX.—

“(A) IN GENERAL.—In the case of any taxable event, the amount of the estate tax imposed by paragraph (1) shall be the amount equal to—

“(i) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the sum of—

“(I) the amount involved in such taxable event, plus

“(II) the aggregate amount involved in previous taxable events with respect to qualified domestic trusts of such decedent, reduced by

“(ii) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the amount referred to in clause (i)(II).

“(B) TENTATIVE TAX WHERE TAX OF DECEDENT NOT FINALLY DETERMINED.—

“(i) IN GENERAL.—If the tax imposed on the estate of the decedent under section 2001 is not finally determined before the taxable event, the amount of the tax imposed by paragraph (1) on such event shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death.

“(ii) REFUND OF EXCESS WHEN TAX FINALLY DETERMINED.—If—

“(I) the amount of the tax determined under clause (i), exceeds

“(II) the tax determined under subparagraph (A) on the basis of the final determination of the tax imposed by section 2001 on the estate of the decedent,

such excess shall be allowed as a credit or refund if claim therefore is filed not later than 1 year after the date of such final determination.

“(3) TAX IMPOSED WHERE TRUST CEASES TO QUALIFY.—If any person other than an individual citizen of the United States or a domestic corporation becomes a trustee of a qualified domestic

trust (or such trust ceases to meet the requirements of subsection (a)(3)), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date on which such person became such a trustee or the date of such cessation, as the case may be.

“(4) **DUE DATE.**—The estate tax imposed by paragraph (1) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs.

“(5) **LIABILITY FOR TAX.**—Each trustee shall be personally liable for the amount of the tax imposed by paragraph (1). Rules similar to the rules of section 2204 shall apply for purposes of the preceding sentence.

“(6) **TREATMENT OF TAX.**—For purposes of section 2056(d), any tax paid under paragraph (1) shall be treated as a tax paid under section 2001 with respect to the estate of the decedent.

“(7) **LIEN FOR TAX.**—For purposes of section 6324, any tax imposed by paragraph (1) shall be treated as an estate tax imposed under this chapter with respect to a decedent dying on the date of the taxable event (and the property involved shall be treated as the gross estate of such decedent).

“(8) **TAXABLE EVENT.**—The term ‘taxable event’ means the event resulting in tax being imposed under paragraph (1).

“(c) **DEFINITIONS.**—For purposes of this section—

“(1) **PROPERTY INCLUDES INTEREST THEREIN.**—The term ‘property’ includes an interest in property.

“(2) **INCOME.**—The term ‘income’ has the meaning given to such term by section 643(b).

“(d) **ELECTION.**—An election under this section with respect to any trust shall be made by the executor on the return of the tax imposed by section 2001. Such an election, once made, shall be irrevocable.”

(3) **CLERICAL AMENDMENT.**—The table of sections for part IV of subchapter A of chapter 1 of the 1986 Code is amended by inserting after the item relating to section 2056 the following new item:

“Sec. 2056A. Qualified domestic trusts.”

(b) **GIFT TAX.**—Section 2523 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(i) **DISALLOWANCE OF MARITAL DEDUCTION WHERE SPOUSE NOT CITIZEN.**—If the spouse of the donor is not a citizen of the United States—

“(1) no deduction shall be allowed under this section,

“(2) section 2503(b) shall be applied with respect to gifts made by the donor to such spouse by substituting ‘\$100,000’ for ‘\$10,000’, and

“(3) the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply.”

(c) **ESTATES OF NONRESIDENTS WHO ARE NOT CITIZENS BUT HAVE CITIZENS AS SPOUSES.**—Subsection (a) of section 2106 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) **MARITAL DEDUCTION ALLOWED WHERE SPOUSE IS CITIZEN.**—The amount which would be deductible with respect to property situated in the United States at the time of the decedent’s death under the principles of section 2056.”

(d) **EFFECTIVE DATE.**—

(1) The amendments made by subsections (a) and (c) shall apply to estates of the decedents dying after the date of the enactment of this Act. 26 USC 2056 note.

(2) The amendments made by subsection (b) shall apply to gifts on or after July 14, 1988. 26 USC 2523 note.

Subtitle E—Long-Term Contract Provisions

SEC. 5041. LONG-TERM CONTRACT PROVISIONS.

(a) **GENERAL RULE.**—Subsection (a) of section 460 of the 1986 Code is amended—

(1) by striking out “70 percent” each place it appears (including in the heading of paragraph (2)) and inserting in lieu thereof “90 percent”, and

(2) by striking out “30 percent” in paragraph (1)(B) and inserting in lieu thereof “10 percent”.

(b) **SPECIAL RULES FOR RESIDENTIAL CONSTRUCTION CONTRACTS.**—

(1) **EXCEPTION FOR HOME CONSTRUCTION CONTRACTS.**—Paragraph (1) of section 460(e) of the 1986 Code is amended to read as follows:

“(1) **IN GENERAL.**—Subsections (a), (b), and (c) (1) and (2) shall not apply to—

“(A) any home construction contract, or

“(B) any other construction contract entered into by a taxpayer—

“(i) who estimates (at the time such contract is entered into) that such contract will be completed within the 2-year period beginning on the contract commencement date of such contract, and

“(ii) whose average annual gross receipts for the 3 taxable years preceding the taxable year in which such contract is entered into do not exceed \$10,000,000.

In the case of a home construction contract with respect to which the requirements of clauses (i) and (ii) of subparagraph (B) are not met, section 263A shall apply notwithstanding subsection (c)(4) thereof.”

(2) **SPECIAL TREATMENT FOR OTHER RESIDENTIAL CONSTRUCTION CONTRACTS.**—Subsection (e) of section 460 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) **SPECIAL RULE FOR RESIDENTIAL CONSTRUCTION CONTRACTS WHICH ARE NOT HOME CONSTRUCTION CONTRACTS.**—In the case of any residential construction contract which is not a home construction contract, subsection (a) shall be applied—

“(A) by substituting ‘70 percent’ for ‘90 percent’ each place it appears, and

“(B) by substituting ‘30 percent’ for ‘10 percent.’”

(3) **DEFINITIONS.**—Subsection (e) of section 460 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(6) **DEFINITIONS RELATING TO RESIDENTIAL CONSTRUCTION CONTRACTS.**—For purposes of this subsection—

“(A) **HOME CONSTRUCTION CONTRACT.**—The term ‘home construction contract’ means any construction contract if 80 percent or more of the estimated total contract costs (as of the close of the taxable year in which the contract was

entered into) are reasonably expected to be attributable to the building, construction, reconstruction, or rehabilitation of—

“(i) dwelling units contained in buildings containing 4 or fewer dwelling units, and

“(ii) improvements to real property directly related to such dwelling units and located on the site of such dwelling units.

For purposes of clause (i), each townhouse or rowhouse shall be treated as a separate building.

“(B) RESIDENTIAL CONSTRUCTION CONTRACT.—The term ‘residential construction contract’ means any contract which would be described in subparagraph (A) if clause (i) of such subparagraph reads as follows:

“(i) dwelling units (as defined in section 167(k)), and’.”

(4) CERTAIN HOME CONSTRUCTION CONTRACTS NOT SUBJECT TO MINIMUM TAX.—Paragraph (3) of section 56(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: “The preceding sentence shall not apply to any home construction contract (as defined in section 460(e)(6)) with respect to which the requirements of clauses (i) and (ii) of section 460(e)(1)(B) are met.”

(c) REGULATORY AUTHORITY.—Section 460 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(h) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the use of related parties, pass-thru entities, intermediaries, options, or other similar arrangements to avoid the application of this section.”

(d) SIMPLIFIED LOOK-BACK METHOD FOR PASS-THRU ENTITIES.—Subsection (b) of section 460 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(5) SIMPLIFIED LOOK-BACK METHOD FOR PASS-THRU ENTITIES.—

“(A) IN GENERAL.—In the case of a pass-thru entity—

“(i) the look-back method of paragraph (3) shall be applied at the entity level,

“(ii) in determining overpayments and underpayments for purposes of applying paragraph (3)(B)—

“(I) any increase in the income under the contract for any taxable year by reason of the allocation under paragraph (3)(A) shall be treated as giving rise to an underpayment determined by applying the highest rate for such year to such increase, and

“(II) any decrease in such income for any taxable year by reason of such allocation shall be treated as giving rise to an overpayment determined by applying the highest rate for such year to such decrease, and

“(iii) any interest required to be paid by the taxpayer under paragraph (3) shall be paid by such entity (and any interest entitled to be received by the taxpayer under paragraph (3) shall be paid to such entity).

“(B) EXCEPTIONS.—

“(i) CLOSELY HELD PASS-THRU ENTITIES.—This paragraph shall not apply to any closely held pass-thru entity.

“(ii) FOREIGN CONTRACTS.—This paragraph shall not apply to any contract unless substantially all of the income from such contract is from sources in the United States.

“(C) OTHER DEFINITIONS.—For purposes of this paragraph—

“(i) HIGHEST RATE.—The term ‘highest rate’ means—
“(I) the highest rate of tax specified in section 11,

or

“(II) if at all times during the year involved more than 50 percent of the interests in the entity are held by individuals directly or through 1 or more other pass-thru entities, the highest rate of tax specified in section 1.

“(ii) PASS-THRU ENTITY.—The term ‘pass-thru entity’ means any—

“(I) partnership,

“(II) S corporation, or

“(III) trust.

“(iii) CLOSELY HELD PASS-THRU ENTITY.—The term ‘closely held pass-thru entity’ means any pass-thru entity if, at any time during any taxable year for which there is income under the contract, 50 percent or more (by value) of the beneficial interests in such entity are held (directly or indirectly) by or for 5 or fewer persons. For purposes of the preceding sentence, rules similar to the constructive ownership rules of section 1563(e) shall apply.”

(e) EFFECTIVE DATES.—

26 USC 460 no

(1) SUBSECTIONS (a), (b), AND (c).—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by subsections (a), (b), and (c) shall apply to contracts entered into on or after June 21, 1988.

(B) BINDING BIDS.—The amendments made by subsections (a), (b), and (c) shall not apply to any contract resulting from the acceptance of a bid made before June 21, 1988. The preceding sentence shall apply only if the bid could not have been revoked or altered at any time on or after June 21, 1988.

(C) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—The amendments made by subsections (a), (b), and (c) shall not apply in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987).

(2) SUBSECTION (d).—The amendment made by subsection (d) shall apply as if included in the amendments made by section 804 of the Reform Act; except that such amendment shall not apply to any contract completed in a taxable year ending before the date of the enactment of this Act, if the due date (determined with regard to extensions) for the return for such year is before such date of enactment.

(d) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study of the revenue realization method of accounting for long-term contracts and of improvements to the percentage of

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completion method of accounting for such contracts. Not later than the date 6 months after the date of the enactment of this Act, the Secretary shall submit a report on such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Subtitle F—Tax-Exempt Bond Provisions

SEC. 5051. TREATMENT OF CERTAIN POOLED FINANCING BONDS.

(a) IN GENERAL.—Section 149 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(f) TREATMENT OF CERTAIN POOLED FINANCING BONDS.—

“(1) IN GENERAL.—Section 103(a) shall not apply to any pooled financing bond unless, with respect to the issue of which such bond is a part, the requirements of paragraphs (2) and (3) are met.

“(2) REASONABLE EXPECTATION REQUIREMENT.—

“(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that as of the close of the 3-year period beginning on the date of issuance of the issue, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers.

“(B) CERTAIN FACTORS MAY NOT BE TAKEN INTO ACCOUNT IN DETERMINING EXPECTATIONS.—Expectations as to changes in interest rates or in the provisions of this title (or in the regulations or rulings thereunder) may not be taken into account in determining whether expectations are reasonable for purposes of this paragraph.

“(C) NET PROCEEDS.—For purposes of subparagraph (A), the term ‘net proceeds’ has the meaning given such term by section 150 but shall not include proceeds used to finance issuance costs and shall not include proceeds necessary to pay interest (during such period) on the bonds which are part of the issue.

“(D) REFUNDING BONDS.—For purposes of subparagraph (A), in the case of a refunding bond, the date of issuance taken into account is the date of issuance of the original bond.

“(3) COST OF ISSUANCE PAYMENT REQUIREMENTS.—The requirements of this paragraph are met with respect to an issue if—

“(A) the payment of legal and underwriting costs associated with the issuance of the issue is not contingent, and

“(B) at least 95 percent of the reasonably expected legal and underwriting costs associated with the issuance of the issue are paid not later than the 180th day after the date of the issuance of the issue.

“(4) POOLED FINANCING BOND.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘pooled financing bond’ means any bond issued as part of an issue more than \$5,000,000 of the proceeds of which are reasonably expected (at the time of the issuance of the bonds) to be used (or are intentionally used) directly or indirectly to make or finance loans to 2 or more ultimate borrowers.

“(B) EXCEPTIONS.—Such term shall not include any bond if—

“(i) section 146 applies to the issue of which such bond is a part (other than by reason of section 141(b)(5)) or would apply but for section 146(i), or

“(ii) section 143(l)(3) applies to such issue.

“(5) DEFINITION OF LOAN; TREATMENT OF MIXED USE ISSUES.—

“(A) LOAN.—For purposes of this subsection, the term ‘loan’ does not include—

“(i) any loan which is a nonpurpose investment (within the meaning of section 148(f)(6)(A), determined without regard to section 148(b)(3)), and

“(ii) any use of proceeds by an agency of the issuer unless such agency is a political subdivision or instrumentality of the issuer.

“(B) PORTION OF ISSUE TO BE USED FOR LOANS TREATED AS SEPARATE ISSUE.—If only a portion of the proceeds of an issue is reasonably expected (at the time of issuance of the bond) to be used (or is intentionally used) as described in paragraph (4)(A), such portion and the other portion of such issue shall be treated as separate issues for purposes of determining whether such portion meets the requirements of this subsection.”

(b) EFFECTIVE DATE.—

26 USC 149 note.

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to bonds issued after October 21, 1988.

(2) SPECIAL RULE FOR REFUNDING BONDS.—In the case of a bond issued to refund a bond issued before October 22, 1988—

(A) if the 3-year period described in section 149(f)(2)(A) of the 1986 Code would (but for this paragraph) expire on or before October 22, 1989, such period shall expire on October 21, 1990, and

(B) if such period expires after October 22, 1989, the portion of the proceeds of the issue of which the refunded bond is a part which is available (on the date of issuance of the refunding issue) to provide loans shall be treated as proceeds of a separate issue (issued after October 21, 1988) for purposes of applying section 149(f) of the 1986 Code.

C. 5052. TREASURY REGULATIONS RELATING TO STUDENT LOAN BONDS.

If the Secretary of the Treasury or his delegate does not issue regulations under section 625 of the Tax Reform Act of 1984 and section 148(g) of the Internal Revenue Code of 1986 before July 1, 1989, the Secretary or his delegate shall before such date submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report explaining why such regulations were not issued.

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C. 5053. RESTRICTIONS ON BONDS USED TO PROVIDE RESIDENTIAL RENTAL PROPERTY FOR FAMILY UNITS.

(a) 501(c)(3) BONDS USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS MUST MEET TARGETING REQUIREMENTS.—Section 145 of the 1986 Code (defining qualified 501(c)(3) bond) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) RESTRICTIONS ON BONDS USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.—

“(1) **IN GENERAL.**—Except as otherwise provided in this subsection, a bond which is part of an issue shall not be a qualified 501(c)(3) bond if any portion of the net proceeds of the issue are to be used directly or indirectly to provide residential rental property for family units.

“(2) **EXCEPTION FOR BONDS USED TO PROVIDE QUALIFIED RESIDENTIAL RENTAL PROJECTS.**—Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

“(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

“(B) qualified residential rental projects (as defined in section 142(d)), or

“(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property

“(3) SUBSTANTIAL REHABILITATION.—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), rules similar to the rules of section 48(g)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

“(B) **EXCEPTION.**—For purposes of subparagraph (A), clause (ii) of section 48(g)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 48(g)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.”

(b) RESIDENTIAL RENTAL PROJECT NOT LOCATED WITHIN JURISDICTION OF ISSUER TREATED AS INVESTMENT PROPERTY.—Paragraph (2) of section 148(b) of the 1986 Code (defining investment property) is amended by striking out “or” at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof “, or”, and by adding at the end thereof the following new subparagraph:

“(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.”

26 USC 145 note.

(c) EFFECTIVE DATE.—

(1) **IN GENERAL.**—The amendments made by this section shall apply to obligations issued after October 21, 1988.

(2) EXCEPTION FOR CONSTRUCTION OR BINDING AGREEMENT.—

(A) The amendments made by this section shall not apply to bonds (other than refunding bonds) with respect to a facility—

(i)(I) the original use of which begins with the taxpayer, and the construction, reconstruction, or rehabilitation of which began before July 14, 1988, and was completed on or after such date, or

(II) the original use of which begins with the taxpayer and with respect to which a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into before

July 14, 1988, and some of such expenditures are incurred on or after such date, and

(ii) described in an inducement resolution or other comparable preliminary approval adopted by an issuing authority (or by a voter referendum) before July 14, 1988.

For purposes of the preceding sentence, the term “significant expenditures” means expenditures greater than 10 percent of the reasonably anticipated cost of the construction, reconstruction, or rehabilitation of the facility involved.

(B) Subparagraph (A) shall not apply to any bond issued after December 31, 1989, and shall not apply unless it is reasonably expected (at the time of issuance of the bond) that the facility will be placed in service before January 1, 1990.

(3) REFUNDINGS.—The amendments made by this section shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued before July 15, 1988, if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(C) the proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code.

Subtitle G—Excise Tax Provisions

SEC. 5061. IMPOSITION OF EXCISE TAX ON MANUFACTURE OR IMPORTATION OF PIPE TOBACCO.

(a) IN GENERAL.—Section 5701 of the 1986 Code (relating to rate of tax on cigarettes, etc.) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) PIPE TOBACCO.—On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of 45 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).”

(b) PIPE TOBACCO DEFINED.—Section 5702 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

“(c) PIPE TOBACCO.—The term ‘pipe tobacco’ means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.”

(c) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 5702 of the 1986 Code (defining tobacco products) is amended by striking out “and smokeless tobacco” and inserting in lieu thereof “smokeless tobacco, and pipe tobacco”.

(2) Subsection (d) of section 5702 of the 1986 Code (defining tobacco products) is amended by striking out “or smokeless

tobacco" and inserting in lieu thereof "smokeless tobacco, or pipe tobacco".

(3) The chapter heading for chapter 52 of the 1986 Code is amended to read as follows:

"CHAPTER 52—CIGARS, CIGARETTES, SMOKELESS TOBACCO, PIPE TOBACCO, AND CIGARETTE PAPERS AND TUBES".

(4) The table of chapters for subtitle E is amended by striking the item relating to chapter 52 and inserting in lieu thereof the following new item:

"Chapter 52. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and cigarette papers and tubes".

26 USC 5701
note.

(d) EFFECTIVE DATE.—

(1) **IN GENERAL.**—The amendments made by this section shall apply to pipe tobacco removed (within the meaning of section 5702(k) of the 1986 Code) after December 31, 1988.

(2) **TRANSITIONAL RULE.**—Any person who—

(A) on the date of the enactment of this Act, is engaged in business as a manufacturer of pipe tobacco, and

(B) before January 1, 1989, submits an application under subchapter B of chapter 52 of the 1986 Code to engage in such business,

may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the 1986 Code shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture pipe tobacco under such chapter 52.

(e) FLOOR STOCKS TAX.—

(1) **IMPOSITION OF TAX.**—On pipe tobacco manufactured in or imported into the United States which is removed before January 1, 1989, and held on such date for sale by any person, there is hereby imposed a tax of 45 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(2) **LIABILITY FOR TAX AND METHOD OF PAYMENT.—**

(A) **LIABILITY FOR TAX.**—A person holding pipe tobacco on January 1, 1989, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) **METHOD OF PAYMENT.**—The tax imposed by paragraph (1) shall be treated as a tax imposed by section 5701 of the 1986 Code and shall be due and payable on February 14, 1989, in the same manner as the tax imposed by such section is payable with respect to pipe tobacco removed on or after January 1, 1989.

(C) **TREATMENT OF PIPE TOBACCO IN FOREIGN TRADE ZONES.**—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, pipe tobacco which is located in a foreign trade zone on January 1, 1989, shall be subject to the tax imposed by paragraph (1) and shall be treated for purposes of this subsection as held on such date for sale if—

(i) internal revenue taxes have been determined, or customs duties liquidated, with respect to such pipe

tobacco before such date pursuant to a request made under the first proviso of section 3(a) of such Act, or

(ii) such pipe tobacco is held on such date under the supervision of a customs officer pursuant to the second proviso of such section 3(a).

Under regulations prescribed by the Secretary of the Treasury or his delegate, provisions similar to sections 5706 and 5708 of the 1986 Code shall apply to pipe tobacco with respect to which tax is imposed by paragraph (1) by reason of this subparagraph.

(3) PIPE TOBACCO.—For purposes of this subsection, the term “pipe tobacco” shall have the meaning given to such term by subsection (o) of section 5702 of the 1986 Code.

(4) EXCEPTION WHERE LIABILITY DOES NOT EXCEED \$1,000.—No tax shall be imposed by paragraph (1) on any person if the tax which would but for this paragraph be imposed on such person does not exceed \$1,000. For purposes of the preceding sentence, all persons who are treated as a single taxpayer under section 5061(e)(3) of the 1986 Code shall be treated as 1 person.

5063. MODIFICATION OF DISTILLED SPIRITS TAX CREDIT FOR FLAVORS CONTENT.

(a) IN GENERAL.—Subparagraph (B) of section 5010(c)(2) of the 1986 Code (defining flavors content) is amended by striking out the “and” at the end of clause (i), by redesignating clause (ii) as clause (iii), and inserting after clause (i) the following new clause:

“(ii) alcohol derived from flavors distilled at a distilled spirits plant, and”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to distilled spirits withdrawn from bond after the date of the enactment of this Act.

26 USC 5010
note.

Subtitle H—Other Revenue Increase Provisions

5071. INCREASE IN PENALTY FOR BAD CHECKS.

(a) GENERAL RULE.—Section 6657 of the 1986 Code (relating to bad checks) is amended—

(1) by striking out “1 percent” and inserting in lieu thereof “2 percent”,

(2) by striking out “\$500” and inserting in lieu thereof “\$750”, and

(3) by striking out “\$5” and inserting in lieu thereof “\$15”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to checks or money orders received after the date of the enactment of this Act.

26 USC 6657
note.

5072. TIME FOR PAYMENT OF TAX ON REVERSION OF PENSION PLAN ASSETS.

(a) IN GENERAL.—Section 4980(c) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) TIME FOR PAYMENT OF TAX.—For purposes of subtitle F, the time for payment of the tax imposed by subsection (a) shall be the last day of the month following the month in which the employer reversion occurs.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to reversions after December 31, 1988.

26 USC 4980
note.

SEC. 5073. DENIAL OF DEDUCTION FOR CERTAIN RESIDENTIAL TELEPHONE SERVICE.

(a) **GENERAL RULE.**—Section 262 of the 1986 Code (relating to personal, living, and family expenses) is amended to read as follows:

“SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

“(a) GENERAL RULE.—Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

“(b) TREATMENT OF CERTAIN PHONE EXPENSES.—For purposes of subsection (a), in the case of an individual, any charge (including taxes thereon) for basic local telephone service with respect to the 1st telephone line provided to any residence of the taxpayer shall be treated as a personal expense.”

26 USC 262 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1988.

SEC. 5074. PARTNERSHIP REPORTING OF UNRELATED BUSINESS TAXABLE INCOME.

(a) **IN GENERAL.**—Section 6031 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(d) SEPARATE STATEMENT OF ITEMS OF UNRELATED BUSINESS TAXABLE INCOME.—In the case of any partnership regularly carrying on a trade or business (within the meaning of section 512(c)(1)), the information required under subsection (b) to be furnished to its partners shall include such information as is necessary to enable each partner to compute its distributive share of partnership income or loss from such trade or business in accordance with section 512(a)(1), but without regard to the modifications described in paragraphs (8) through (15) of section 512(b).”

26 USC 6031
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1988.

SEC. 5075. OPTIONS SUBJECT TO WASH SALE RULES.

(a) **IN GENERAL.**—Subsection (a) of section 1091 of the 1986 Code (relating to losses from wash sales of stock or securities) is amended by adding at the end thereof the following sentence: “For purposes of this section, the term ‘stock or securities’ shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.”

26 USC 1091
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any sale after the date of enactment of this Act, in taxable years ending after such date.

SEC. 5076. INTEREST CHARGE ON INSTALLMENT SALES OF CERTAIN PROPERTY.

(a) **GENERAL RULE.**—Paragraph (1) of section 453A(b) of the 1986 Code is amended to read as follows:

“(1) IN GENERAL.—This section shall apply to any obligation which arises from the disposition of any property under the installment method, but only if the sales price of such property exceeds \$150,000.”

(b) CLERICAL AMENDMENTS.—

(1) The section heading of section 453A of the 1986 Code is amended by striking out **“OF REAL PROPERTY”**.

(2) The table of sections of subpart B of part II of subchapter A of chapter 1 of the 1986 Code is amended by striking out “of real property” in the item relating to section 453A.

(c) **EFFECTIVE DATE.**—

26 USC 453A
note.

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to sales after December 31, 1988.

(2) **BINDING CONTRACT, ETC.**—The amendments made by this section shall not apply to any sale on or before December 31, 1990, if—

(A) such sale is pursuant to a written binding contract in effect on October 21, 1988, and at all times thereafter before such sale,

(B) such sale is pursuant to a letter of intent in effect on October 21, 1988, or

(C) there is a board of directors or shareholder approval for such sale on or before October 21, 1988.

SEC. 5077. APPLICATION OF NET OPERATING LOSS RULES TO STOCK ACQUIRED BY AN EMPLOYEE STOCK OWNERSHIP PLAN.

(a) **IN GENERAL.**—Clause (ii) of section 382(l)(3)(C) of the 1986 Code is amended by striking “and” at the end of subclause (I), by striking the period at the end of subclause (II) and inserting in lieu thereof “, and”, and by adding at the end thereof the following:

“(III) immediately after the acquisition the plan has a number of participants which is not less than 50 percent of the average number of employees of the loss corporation during the 3-year period ending with such acquisition.

for purposes of subclause (III), except as provided in regulations, all members of an affiliated group which includes the loss corporation and which files a consolidated return shall be treated as 1 loss corporation.”

(b) **EFFECTIVE DATE.**—

26 USC 382 note.

(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply to acquisition after December 31, 1988.

(2) **EXCEPTION.**—The amendment made by subsection (a) shall not apply to acquisitions after December 31, 1988, pursuant to a binding written contract entered into on or before October 21, 1988.

TITLE VI—OTHER SUBSTANTIVE REVENUE PROVISIONS

Subtitle A—Provisions Relating to Individuals

SEC. 6001. TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF AN INSTITUTION OF HIGHER EDUCATION.

(a) **IN GENERAL.**—Section 170 of the 1986 Code is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) **TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF INSTITUTIONS OF HIGHER EDUCATION.**—

“(1) **IN GENERAL.**—For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

“(2) **AMOUNT DESCRIBED.**—For purposes of paragraph (1), an amount is described in this paragraph if—

“(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

“(i) which is described in subsection (b)(1)(A)(ii), and

“(ii) which is an institution of higher education (as defined in section 3304(f)), and

“(B) such amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying such amount the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

If any portion of a payment is for the purchase of such tickets, such portion and the remaining portion (if any) of such payment shall be treated as separate amounts for purposes of this subsection.”

USC 170 note.

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendment made by this section shall apply to taxable years beginning after December 31, 1983.

(2) **WAIVER OF STATUTE OF LIMITATIONS.**—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of section 170(m) of the 1986 Code (as added by subsection (a)) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.

SEC. 6002. NONRECOGNITION OF GAIN WHERE 1 SPOUSE DIES BEFORE OCCUPYING NEW RESIDENCE.

(a) **IN GENERAL.**—Subsection (g) of section 1034 of the 1986 Code (relating to rollover of gain on sale of principal residence) is amended by adding at the end thereof the following: “For purposes of this subsection, except to the extent provided in regulations, in the case of an individual who dies after the date of the sale of the old residence and is married on the date of death, consent to the application of paragraph (2) by such individual’s spouse and use of the new residence as the principal residence of such spouse shall be treated as consent and use by such individual.”

USC 1034 e.

(b) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to sales and exchanges of old residences (within the meaning of section 1034 of the 1986 Code) after December 31, 1984, in taxable years ending after such date.

SEC. 6003. MEALS ON CERTAIN VESSELS AND OFFSHORE OIL PLATFORMS EXEMPT FROM 80 PERCENT LIMITATION ON DEDUCTION FOR MEALS.

(a) **IN GENERAL.**—Paragraph (2) of section 274(n) of the 1986 Code (relating to only 80 percent of meal and entertainment expenses allowed as deduction), as amended by title I of this Act, is amended by striking out “or” at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof “, or”, and by adding at the end thereof the following new subparagraph:

“(F) such expense is for food or beverages—

“(i) required by Federal law to be provided to crew members of a commercial vessel,

“(ii) provided to crew members of a commercial vessel—

“(I) which is operating on the Great Lakes, the Saint Lawrence Seaway, or any inland waterway of the United States, and

“(II) which is of a kind which would be required by Federal law to provide food and beverages to crew members if it were operated at sea,

“(iii) provided on an oil or gas platform or drilling rig if the platform or rig is located offshore, or

“(iv) provided on an oil or gas platform or drilling rig, or at a support camp which is in proximity and integral to such platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude.

Clauses (i) and (ii) of subparagraph (F) shall not apply to vessels primarily engaged in providing luxury water transportation (determined under the principles of subsection (m)).”

6004. EFFECTIVE DATES.—

(1) Clauses (i) and (ii) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1988.

(2) Clauses (iii) and (iv) of section 274(n)(2)(F) of the 1986 Code, as added by subsection (a), shall apply to taxable years beginning after December 31, 1987.

26 USC 274 note.

6004. TREATMENT OF CERTAIN INNOCENT SPOUSES.

Subsection (c) of section 424 of the Tax Reform Act of 1984 (relating to innocent spouse relieved of liability in certain cases) is amended by adding at the end thereof the following new paragraph:

26 USC 6013 note.

“(3) TRANSITIONAL RULE.—If—

“(A) a joint return under section 6013 of the Internal Revenue Code of 1954 was filed before January 1, 1985,

“(B) on such return there is an understatement (as defined in section 6661(b)(2)(A) of such Code) which is attributable to disallowed deductions attributable to activities of one spouse,

“(C) the amount of such disallowed deductions exceeds the taxable income shown on such return,

“(D) without regard to any determination before October 21, 1988, the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such an understatement, and

“(E) the marriage between such spouses terminated and immediately after such termination the net worth of the other spouse was less than \$10,000,

notwithstanding any law or rule of law (including *res judicata*), the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement, and, to the extent the liability so attributable has been collected from such other spouse, it shall be refunded or credited to such other spouse. No credit or refund shall be made under the preceding sentence unless claim therefor has been submitted to

the Secretary of the Treasury or his delegate before the date 1 year after the date of the enactment of this paragraph, and no interest on such credit or refund shall be allowed for any period before such date of enactment.”.

USC 1113b

SEC. 6005. INTERIM TREATMENT OF CERTAIN AMOUNTS AWARDED TO CHRISTA McAULIFFE FELLOWS.

(a) **IN GENERAL.**—In the case of an individual who is a Christa McAuliffe Fellow (as defined in section 561(b) of the Higher Education Act of 1965) and is awarded a fellowship pursuant to section 561 of such Act, for purposes of the 1986 Code, gross income shall not include any amount of such fellowship award—

(1) which is expended for a project approved by the Secretary of Education pursuant to section 563(b) of such Act, and

(2) which is not expended directly or indirectly for the personal use or benefit of such individual.

(b) **EFFECTIVE DATE.**—Subsection (a) shall apply to amounts received before July 1, 1990, in taxable years beginning before such date.

SEC. 6006. ELECTION TO CLAIM CERTAIN UNEARNED INCOME OF CHILD ON PARENT'S RETURN.

(a) **IN GENERAL.**—Subsection (i) of section 1 of the 1986 Code (relating to persons required to make returns of income) is amended by adding at the end thereof the following new paragraph:

“(7) **ELECTION TO CLAIM CERTAIN UNEARNED INCOME OF CHILD ON PARENT'S RETURN.**—

“(A) **IN GENERAL.**—If—

“(i) any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends),

“(ii) such gross income is more than \$500 and less than \$5,000,

“(iii) no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

“(iv) the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B),

such child shall be treated as having no gross income for such year and shall not be required to file a return under section 6012.

“(B) **INCOME INCLUDED ON PARENT'S RETURN.**—In the case of a parent making the election under this paragraph—

“(i) the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds \$1,000) shall be included in such parent's gross income for the taxable year,

“(ii) the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of—

“(I) the amount determined under this section after the application of clause (i), plus

“(II) for each such child, the lesser of \$75 or 15 percent of the excess of the gross income of such child over \$500, and

“(iii) any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

“(C) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.”

“(D) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1988. 26 USC 1 note.

6007. JURY DUTY PAY REMITTED TO AN INDIVIDUAL'S EMPLOYER ALLOWED AS A DEDUCTION IN COMPUTING GROSS INCOME.

“(A) IN GENERAL.—Part VII of subchapter B of chapter 1 of the 1986 Code (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

C. 220. JURY DUTY PAY REMITTED TO EMPLOYER.

“(a) If—

“(1) an individual receives payment for the discharge of jury duty, and

“(2) the employer of such individual requires the individual to remit any portion of such payment to the employer in exchange for payment by the employer of compensation for the period the individual was performing jury duty,

then there shall be allowed as a deduction the amount so remitted.”

“(B) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of the 1986 Code (defining adjusted gross income) is amended by inserting after paragraph (12) the following new paragraph:

“(13) JURY DUTY PAY REMITTED TO EMPLOYER.—The deduction allowed by section 220.”

“(C) CLERICAL AMENDMENT.—The table of sections for part VII of chapter B of chapter 1 of the 1986 Code is amended by striking the item relating to section 220 and inserting in lieu thereof the following new items:

“Sec. 220. Jury duty pay remitted to employer.

“Sec. 221. Cross references.”

“(D) EFFECTIVE DATE.—The amendments made by this section shall apply as if included in the amendments made by section 132 of the Tax Reform Act of 1986. 26 USC 62 note.

6008. BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS. 26 USC 162 note.

“(A) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route, such employee shall be permitted to compute the amount allowable as a deduction under section 179 of the Internal Revenue Code of 1986 for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate.

“(B) SUBSECTION (a) NOT TO APPLY IF EMPLOYEE CLAIMS DEPRECIATION DEDUCTIONS FOR AUTOMOBILE.—Subsection (a) shall not apply in respect to any automobile if, for any taxable year beginning

after December 31, 1987, the taxpayer claimed depreciation deductions for such automobile.

(c) **BASIC STANDARD RATE.**—For purposes of this section, the term “basic standard rate” means the standard mileage rate which is prescribed by the Secretary of the Treasury or his delegate for computing the amount of the deduction for the business use of an automobile and which—

(1) is in effect at the time of the use referred to in subsection

(a),

(2) applies to an automobile which is not fully depreciated, and

(3) applies to the first 15,000 miles (or such other number as the Secretary of the Treasury or his delegate may hereafter prescribe) of business use during the taxable year.

(d) **EFFECTIVE DATE.**—The provisions of this section shall apply to taxable years beginning after December 31, 1987.

SEC. 6009. EXCLUSION FROM GROSS INCOME FOR INCOME FROM UNITED STATES SAVINGS BONDS USED TO PAY TUITION AND FEES.

(a) **IN GENERAL.**—Part III of subchapter B of chapter 1 of the 1986 Code (relating to items specifically excluded from gross income) is amended by redesignating section 135 as section 136 and by inserting after section 134 the following new section:

“SEC. 135. INCOME FROM UNITED STATES SAVINGS BONDS USED TO PAY HIGHER EDUCATION TUITION AND FEES.

“(a) **GENERAL RULE.**—In the case of an individual who pays qualified higher education expenses during the taxable year, no amount shall be includible in gross income by reason of the redemption during such year of any qualified United States savings bond.

“(b) **LIMITATIONS.**—

“(1) **LIMITATION WHERE REDEMPTION PROCEEDS EXCEED HIGHER EDUCATION EXPENSES.**—

“(A) **IN GENERAL.**—If—

“(i) the aggregate proceeds of qualified United States savings bonds redeemed by the taxpayer during the taxable year exceed

“(ii) the qualified higher education expenses paid by the taxpayer during such taxable year, the amount excludable from gross income under subsection (a) shall not exceed the applicable fraction of the amount excludable from gross income under subsection (a) without regard to this subsection.

“(B) **APPLICABLE FRACTION.**—For purposes of subparagraph (A), the term ‘applicable fraction’ means the fraction the numerator of which is the amount described in subparagraph (A)(ii) and the denominator of which is the amount described in subparagraph (A)(i).

“(2) **LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.**—

“(A) **IN GENERAL.**—If the modified adjusted gross income of the taxpayer for the taxable year exceeds \$40,000 (\$60,000 in the case of a joint return), the amount which would (but for this paragraph) be excludable from gross income under subsection (a) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so excludable as such excess bears to \$15,000 (\$30,000 in the case of a joint return).

“(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1990, each dollar amount contained in subparagraph (A) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 1989’ for ‘calendar year 1987’ in subparagraph (B) thereof.

“(C) ROUNDING.—If any amount as adjusted under subparagraph (A) or (B) is not a multiple of \$50, such amount shall be rounded to the nearest multiple of \$50 (or if such amount is a multiple of \$25, such amount shall be rounded to the next highest multiple of \$50).

DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED UNITED STATES SAVINGS BOND.—The term ‘qualified United States savings bond’ means any United States savings bond issued—

“(A) after December 31, 1989,

“(B) to an individual who has attained age 24 before the date of issuance, and

“(C) at discount under section 3105 of title 31, United States Code.

“(2) QUALIFIED HIGHER EDUCATION EXPENSES.—

“(A) IN GENERAL.—The term ‘qualified higher education expenses’ means tuition and fees required for the enrollment or attendance of—

“(i) the taxpayer,

“(ii) the taxpayer’s spouse, or

“(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution.

“(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—

Such term shall not include expenses with respect to any course or other education involving sports, games, or hobbies other than as part of a degree program.

“(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The term ‘eligible educational institution’ means—

“(A) an institution described in section 1201(a) or subparagraph (C) or (D) of section 481(a)(1) of the Higher Education Act of 1965 (as in effect on October 21, 1988), and

“(B) an area vocational education school (as defined in subparagraph (C) or (D) of section 521(3) of the Carl D. Perkins Vocational Education Act) which is in any State (as defined in section 521(27) of such Act), as such sections are in effect on October 21, 1988.

“(4) MODIFIED ADJUSTED GROSS INCOME.—The term ‘modified adjusted gross income’ means the adjusted gross income of the taxpayer for the taxable year determined—

“(A) without regard to this section and sections 911, 931, and 933, and

“(B) after the application of sections 86, 469, and 219.

SPECIAL RULES.—

“(1) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS AND VETERANS BENEFITS.—The amount of qualified higher education expenses otherwise taken into account under subsection (a) respect to the

education of an individual shall be reduced (before the application of subsection (b)) by the sum of the amounts received with respect to such individual for the taxable year as—

“(A) a qualified scholarship which under section 117 is not includable in gross income,

“(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or

“(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for educational expenses, or attributable to attendance at an eligible educational institution, which is exempt from income taxation by any law of the United States.

“(2) NO EXCLUSION FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and his spouse file a joint return for the taxable year.

“(3) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring record keeping and information reporting.”

26 USC 135 note.

(b) PROMOTION OF PUBLIC AWARENESS OF PROGRAM.—The Secretary of the Treasury or his delegate shall take such actions as may be necessary to make the general public aware of the program established by this section.

(c) TECHNICAL AMENDMENTS.—

(1) Subparagraph (A) of section 86(b)(2) of the 1986 Code is amended by inserting “135,” before “911”.

(2) Clause (i) of section 219(g)(3)(A) of the 1986 Code is amended by striking “section 911” and inserting “sections 135 and 911”.

(3) Subparagraph (D) of section 469(i)(3) of the 1986 Code is amended by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by inserting after clause (i) the following new clause:

“(ii) the amount excludable from gross income under section 135,”.

(4) The table of sections for part III of subchapter B of chapter 1 of the 1986 Code is amended by striking the last item and inserting the following new items:

“Sec. 135. Income from United States savings bonds used to pay higher education tuition and fees.

“Sec. 136. Cross references to other Acts.”

26 USC 86 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

26 USC 135 note.

(e) PARENTAL ASSISTANCE WITH TUITION STAMP STUDY.—The Secretary of the Treasury or his delegate, after consultation with the Secretary of Education or his delegate, shall conduct a study of the feasibility of using stamps or similar programs to encourage and facilitate savings by parents towards the purchase of Series EE bonds eligible for the exclusion provided under the amendments made by this section. Not later than December 31, 1989, the Secretary of the Treasury or his delegate shall submit the results of such study, together with any recommendations deemed appropriate, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 6010. MODIFICATION OF ADDITIONAL EXEMPTION FOR STUDENT DEPENDENTS.

(a) **IN GENERAL.**—Clause (ii) of section 151(c)(1)(B) of the 1986 Code (relating to additional exemption for dependents) is amended by inserting “who has not attained the age of 24 at the close of such calendar year” before the period.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1988. 26 USC 151 note.

SEC. 6011. PRINCIPAL RESIDENCE CAPITAL GAINS EXCLUSION.

(a) **IN GENERAL.**—Subsection (d) of section 121 of the Internal Revenue Code of 1986 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended by adding at the end thereof the following new paragraph:

“(9) **DETERMINATION OF USE DURING PERIODS OF OUT-OF-RESIDENCE CARE.**—In the case of a taxpayer who—

“(A) becomes physically or mentally incapable of self-care, and

“(B) owns property and uses such property as the taxpayer’s principal residence during the 5-year period described in subsection (a)(2) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer’s principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer’s condition.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to any sale or exchange after September 30, 1988, in taxable years ending after such date. 26 USC 121 note.

Subtitle B—Provisions Relating to Accounting and Agriculture

SEC. 6026. AMENDMENTS TO UNIFORM CAPITALIZATION RULES.

(a) **TREATMENT OF CERTAIN PRODUCERS OF CREATIVE PROPERTY.**—Section 263A of the 1986 Code is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) **EXEMPTION FOR FREE LANCE AUTHORS, PHOTOGRAPHERS, AND ARTISTS.**—

“(1) **IN GENERAL.**—Nothing in this section shall require the capitalization of any qualified creative expense.

“(2) **QUALIFIED CREATIVE EXPENSE.**—For purposes of this subsection, the term ‘qualified creative expense’ means any expense—

“(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer, photographer, or artist, and

“(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) WRITER.—The term ‘writer’ means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript, musical composition (including any accompanying words), or dance score.

“(B) PHOTOGRAPHER.—The term ‘photographer’ means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a photograph or photographic negative or transparency.

“(C) ARTIST.—

“(i) IN GENERAL.—The term ‘artist’ means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a picture, painting, sculpture, statue, etching, drawing, cartoon, graphic design, or original print edition.

“(ii) CRITERIA.—In determining whether any expense is paid or incurred in the trade or business of being an artist, the following criteria shall be taken into account:

“(I) The originality and uniqueness of the item created (or to be created).

“(II) The predominance of aesthetic value over utilitarian value of the item created (or to be created).

“(D) TREATMENT OF CERTAIN PERSONAL SERVICE CORPORATIONS.—

“(i) IN GENERAL.—In the case of a personal service corporation, this subsection shall apply to any expense of such corporation which directly relates to the activities of the qualified employee-owner in the same manner as if such expense were incurred by such employee-owner.

“(ii) QUALIFIED EMPLOYEE-OWNER.—The term ‘qualified employee-owner’ means any individual who is an employee-owner of the personal service corporation and who is a writer, photographer, or artist, but only if substantially all of the stock of such corporation is owned by such individual and members of his family (as defined in section 267(c)(4)).

“(iii) PERSONAL SERVICE CORPORATION.—For purposes of this subparagraph, the term ‘personal service corporation’ means any personal service corporation (as defined in section 269A(b)).”

(b) TREATMENT OF ANIMALS PRODUCED IN FARMING BUSINESS.—

(1) IN GENERAL.—Subparagraph (A) of section 263A(d)(1) of the 1986 Code (relating to exception for farming businesses) is amended to read as follows:

“(A) IN GENERAL.—This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

“(i) Any animal.

“(ii) Any plant which has a preproductive period of 2 years or less.”

(2) CONFORMING AMENDMENTS.—

(A) The heading of paragraph (1) of section 263A(d) of the 1986 Code is amended to read as follows:

“(1) SECTION NOT TO APPLY TO CERTAIN PROPERTY.—”.

(B) Subsections (d)(3) and (e) of section 263A of the 1986 Code are each amended by striking out “or animal” each place it appears.

C) TREATMENT OF PISTACHIO TREES.—Subparagraph (B) of section 263A(d)(3) of the 1986 Code (relating to certain persons not eligible) is amended to read as follows:

“(B) CERTAIN PERSONS NOT ELIGIBLE.—No election may be made under this paragraph by a corporation, partnership, or tax shelter, if such corporation, partnership, or tax shelter is required to use an accrual method of accounting under section 447 or 448(a)(3).”

D) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this section shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986.

(2) SUBSECTION (b).—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to costs incurred after December 31, 1988, in taxable years ending after such date.

(B) REVOCATION OF ELECTION.—If the taxpayer made an election under section 263A(d)(3) of the 1986 Code for a taxable year beginning before January 1, 1989, such taxpayer may, without the consent of the Secretary of the Treasury or his delegate, revoke such election effective for the taxpayer's 1st taxable year beginning after December 31, 1988.

C. 6027. TREATMENT OF SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURES.

A) IN GENERAL.—Paragraph (3) of section 168(e) of the 1986 Code (relating to classification of property) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new paragraph:

“(D) 10-YEAR PROPERTY.—The term ‘10-year property’ includes any single purpose agricultural or horticultural structure (within the meaning of section 48(p)).”

B) TECHNICAL AMENDMENTS.—

(1) Subparagraph (C) of section 168(e)(3) of the 1986 Code is amended by adding “and” at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii).

(2) The table contained in subparagraph (B) of section 168(g)(3) of the 1986 Code is amended by striking out all that follows the item relating to subparagraph (C)(i) and inserting in lieu thereof the following new items:

“(D).....	15
“(E)(i).....	24
“(E)(ii).....	24
“(F).....	50”.

C) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1988.

(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before January 1, 1990, and if such property—

26 USC 263A
note.

26 USC 168 note.

(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.

SEC. 6028. TREATMENT OF PROPERTY USED IN A FARMING BUSINESS.

(a) IN GENERAL.—Paragraph (2) of section 168(b) of the 1986 Code (as amended by title I) is amended by striking out “or” at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

“(B) any property used in a farming business (within the meaning of section 263A(e)(4)), or”.

26 USC 168 note.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1988.

(2) EXCEPTION.—The amendments made by this section shall not apply to any property if such property is placed in service before July 1, 1989, and if such property—

(A) is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on July 14, 1988, or

(B) is constructed or reconstructed by the taxpayer and such construction or reconstruction began by July 14, 1988.

SEC. 6029. TREATMENT OF CERTAIN TREES.

(a) IN GENERAL.—Subparagraph (D) of section 168(e)(3) of the 1986 Code (relating to classification of certain property), as amended by section 6027 of this Act, is amended to read as follows:

“(D) 10-YEAR PROPERTY.—The term ‘10-year property’ includes—

“(i) any single purpose agricultural or horticultural structure (within the meaning of section 48(p)), and

“(ii) any tree or vine bearing fruit or nuts.”

(b) ONLY STRAIGHT-LINE DEPRECIATION ALLOWED.—Paragraph (3) of section 168(b) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(D) Property described in subsection (e)(3)(D)(ii).”

(c) CLASS LIFE DETERMINATION.—The table contained in subparagraph (B) of section 168(g)(3) of the 1986 Code, as amended by section 6027 of this Act, is amended by striking out the item relating to subparagraph (D) and inserting in lieu thereof the following new item:

“(D)(i).....”	15
“(D)(ii).....”	20”.

26 USC 168 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 1988.

SEC. 6030. ONE-YEAR DEFERRAL OF PROCEEDS FROM LIVESTOCK SOLD ON ACCOUNT OF DROUGHT.

(a) IN GENERAL.—Paragraph (1) of section 451(e) of the 1986 Code (relating to special rule for proceeds from livestock sold on account of drought) is amended by striking out “(other than livestock described in section 1231(b)(3))”.

26 USC 451 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales or exchanges occurring after December 31, 1987.

SEC. 6031. CERTAIN REPLEDGES PERMITTED.26 USC 453A
note.

(a) **GENERAL RULE.**—Section 453A(d) of the 1986 Code (relating to pledges, etc., of installment obligations) shall not apply to any pledge after December 17, 1987, of an installment obligation to secure any indebtedness if such indebtedness is incurred to refinance indebtedness which was outstanding on December 17, 1987, and which was secured on such date and all times thereafter before such refinancing by a pledge of such installment obligation.

(b) **LIMITATION.**—Subsection (a) shall not apply to the extent that the principal amount of the indebtedness resulting from the refinancing exceeds the principal amount of the refinanced indebtedness immediately before the refinancing.

(c) **CERTAIN REFINANCINGS PERMITTED.**—For purposes of subsection (a), if—

(1) a refinancing is attributable to the calling of indebtedness by the creditor, and

(2) such refinancing is not with the creditor under the refinanced indebtedness or a person related to such creditor, such refinancing shall, to the extent the refinanced indebtedness qualifies under subsections (a) and (b), be treated as a continuation of such refinanced indebtedness.

SEC. 6032. TREATMENT OF INDIRECT HOLDINGS THROUGH TRUSTS UNDER SECTION 448 OF THE 1986 CODE.

(a) **GENERAL RULE.**—Paragraph (2) of section 448(d) of the 1986 Code (defining qualified personal service corporation) is amended by adding at the end thereof the following new sentence:

“To the extent provided in regulations which shall be prescribed by the Secretary, indirect holdings through a trust shall be taken into account under subparagraph (B).”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

26 USC 448 note.

SEC. 6033. DISASTER ASSISTANCE ACT PAYMENTS INCLUDED IN SPECIAL RULE FOR TAXABLE YEAR OF INCLUSION.

(a) **DISASTER ASSISTANCE PAYMENTS.**—The second sentence of section 451(d) of the 1986 Code (relating to special rule for crop insurance proceeds or disaster payments) is amended by inserting “or title II of the Disaster Assistance Act of 1988,” after “the Agricultural Act of 1949, as amended,”.

(b) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to payments received before, on, or after the date of enactment of this Act.

26 USC 451 note.

Subtitle C—Pensions and Employee Benefits

SEC. 6051. PROVISIONS RELATING TO BENEFITS UNDER DISCRIMINATORY PLANS.

(a) **PROVISIONS NOT TO APPLY TO CHURCH PLANS.**—Section 89(i) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) **CHURCH PLANS.**—The term ‘statutory employee benefit plan’ shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term ‘church’ has the meaning given such term by section

3121(w)(3)(A), including a qualified church-controlled organization (as defined in section 3121(w)(3)(B)).”

(b) **CAFETERIA PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.**—Section 125(c)(2)(C) of the 1986 Code is amended by adding at the end thereof the following new sentence: “In applying section 89 to a plan described in this subparagraph, contributions under the plan shall be tested as of the time the contributions were made.”

26 USC 89 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the amendments made by section 1151 of the Reform Act.

SEC. 6052. MODIFICATIONS OF DISCRIMINATION RULES APPLICABLE TO CERTAIN ANNUITY CONTRACTS.

(a) **EXCLUDED EMPLOYEES.**—

(1) **IN GENERAL.**—The last sentence of section 403(b)(12)(A) of the 1986 Code is amended to read as follows: “Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.”

26 USC 403 note.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect as if included in the amendment made by section 1120(b) of the Reform Act.

26 USC 403 note.

(b) **SAMPLING.**—In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.

SEC. 6053. REQUIRED DISTRIBUTION BEGINNING DATE FOR GOVERNMENTAL AND CHURCH PLANS.

(a) **IN GENERAL.**—Section 401(a)(9)(C) of the 1986 Code is amended by adding at the end thereof the following new sentence: “In the case of a governmental plan or church plan (as defined in section 89(i)(4)), the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires.”

26 USC 401 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1121 of the Reform Act.

SEC. 6054. SECTION 415 LIMITATION FOR STATE AND LOCAL PLANS.

(a) **MODIFIED LIMITATIONS.**—Section 415(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(10) **SPECIAL RULE FOR STATE AND LOCAL GOVERNMENT PLANS.**—

“(A) **LIMITATION TO EQUAL ACCRUED BENEFIT.**—In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, the limitation with respect to a qualified participant under this subsection shall

not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

“(B) **QUALIFIED PARTICIPANT.**—For purposes of this paragraph, the term ‘qualified participant’ means a participant who first became a participant in the plan maintained by the employer before January 1, 1990.

“(C) **ELECTION.**—This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)) applied without regard to paragraph (2)(F).”

(b) EFFECTIVE DATES.—

26 USC 415 note.

(1) **IN GENERAL.**—Except as provided in this subsection, the amendment made by this subsection apply to years beginning after December 31, 1982.

(2) **ELECTION.**—Section 415(b)(10)(C) of the 1986 Code (as added by subsection (a)) shall not apply to any year beginning before January 1, 1990.

SEC. 6055. MINIMUM PARTICIPATION STANDARDS.

(a) **IN GENERAL.**—Section 401(a)(26) of the 1986 Code, as amended by this Act, is amended by redesignating subparagraph (H) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

“(H) **SPECIAL RULE FOR CERTAIN POLICE OR FIREFIGHTERS.**—

“(i) **IN GENERAL.**—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

“(ii) **QUALIFIED PUBLIC SAFETY EMPLOYEE.**—For purposes of this subparagraph, the term ‘qualified public safety employee’ means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect as if included in the amendments made by section 1112(b) of the Reform Act.

26 USC 401 note.

SEC. 6056. STUDY OF EFFECT OF MINIMUM PARTICIPATION RULE ON EMPLOYERS REQUIRED TO PROVIDE CERTAIN RETIREMENT BENEFITS.

(a) **STUDY.**—The Secretary of the Treasury or his delegate shall conduct a study on the application of section 401(a)(26) of the Internal Revenue Code of 1986 to Government contractors who—

(1) are required by Federal law to provide certain employees specified retirement benefits, and

(2) establish a separate plan for such employees while maintaining a separate plan for employees who are not entitled to such benefits.

Such study shall consider the Federal requirements with respect to employee benefits for employees of Government contractors, whether a special minimum participation rule should apply to such

employees, and methods by which plans may be modified to satisfy minimum participation requirements.

(b) **REPORT.**—The Secretary of the Treasury or his delegate shall report the results of the study under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than September 1, 1989.

SEC. 6057. PROHIBITION ON COLLECTIBLES NOT TO INCLUDE STATE COINS.

(a) **IN GENERAL.**—Paragraph (3) of section 408(m) of the 1986 Code is amended to read as follows:

“(3) **EXCEPTION FOR CERTAIN COINS.**—In the case of an individual retirement account, paragraph (2) shall not apply to—

“(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

“(B) any silver coin described in section 5112(e) of title 31, or

“(C) any coin issued under the laws of any State.”

26 USC 408 note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to acquisitions after the date of the enactment of this Act.

SEC. 6058. APPLICATION OF FUNDING RULES TO MULTIPLE EMPLOYER PLANS.

(a) **IN GENERAL.**—Paragraph (4) of section 413(c) of the 1986 Code is amended to read as follows:

“(4) **FUNDING.**—

“(A) **IN GENERAL.**—In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan for purposes of section 412 unless such plan uses a method for determining required contributions which provides that any employer contributes not less than the amount which would be required if such employer maintained a separate plan.

“(B) **OTHER PLANS.**—In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year of the plan beginning after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary.”

(b) **DEDUCTION LIMITATIONS.**—Paragraph (6) of section 413(c) of the 1986 Code is amended to read as follows:

“(6) **DEDUCTION LIMITATIONS.**—

“(A) **IN GENERAL.**—In the case of a plan established after December 31, 1988, each applicable limitation provided by section 404(a) shall be determined as if each employer were maintaining a separate plan.

“(B) **OTHER PLANS.**—

“(i) **IN GENERAL.**—In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single

employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan.

“(ii) SPECIAL RULE.—If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer’s contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.”

(c) CONFORMING AMENDMENT.—Section 413(c) of the 1986 Code is amended by striking out the last sentence and by inserting after paragraph (6) the following new paragraph:

“(7) ALLOCATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary.

“(B) ASSET AND LIABILITIES OF PLAN.—For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan.”

(d) EFFECTIVE DATE.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.

26 USC 413 note.

SEC. 6059. APPLICATION OF SECTION 415 LIMITATIONS TO POLICE AND FIREFIGHTERS.

(a) IN GENERAL.—Clause (ii) of section 415(b)(2)(H) of the 1986 Code is amended by striking out “20 years” and inserting in lieu thereof “15 years”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply as if included in the amendments made by section 1106(b)(2) of the Reform Act.

26 USC 415 note.

SEC. 6060. EXCISE TAX ON DISPOSITION OF STOCK BY AN ESOP NOT TO APPLY TO CERTAIN FORCED DISPOSITIONS.

(a) IN GENERAL.—Subsection (e) of section 4978A of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(4) FORCED DISPOSITION OCCURRING BY OPERATION OF A STATE LAW.—Any forced disposition of qualified employer securities by the employee stock ownership plan of a corporation occurring by operation of a State law shall not be treated as a disposition. This paragraph shall only apply to securities which, at the time such securities were purchased by the employee stock ownership plan, were regularly traded on an established securities market.”

26 USC 4978
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 10413 of the Revenue Act of 1987.

26 USC 133 note.

SEC. 6061. LOANS TO ACQUIRE EMPLOYER SECURITIES.

Notwithstanding the last sentence of section 111B(h)(5)(A) of this Act, the amendments made by paragraphs (1) and (2) of section 111B(h) of this Act shall not apply to any loan used to refinance a loan described in section 133(b)(1)(A) of the 1986 Code which is made before October 22, 1986, if the terms of the refinanced loan do not extend the total commitment period beyond the later of—

- (1) the term of the original securities acquisition loan, or
- (2) the amortization period used to determine the regular payments (prior to any final or balloon payment) applicable to the original securities acquisition loan.

SEC. 6062. EFFECTIVE DATE OF SECTION 415 LIMITATIONS OF COLLECTIVELY BARGAINED AGREEMENTS.

26 USC 415 note.

(a) **IN GENERAL.**—Paragraph (2) of section 1106(i) of the Reform Act is amended to read as follows:

“(2) **COLLECTIVE BARGAINING AGREEMENTS.**—In the case of a plan in effect before March 1, 1986, pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section (other than subsection (d)) shall not apply to contributions or benefits pursuant to such agreement in years beginning before October 1, 1991.”

26 USC 415 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect as if included in the provisions of section 1106 of the Reform Act.

26 USC 125 note.

SEC. 6063. TREATMENT OF PRE-1989 ELECTIONS FOR DEPENDENT CARE ASSISTANCE UNDER CAFETERIA PLANS.

For purposes of section 125 of the 1986 Code, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1989, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1988, and such assistance is includible in gross income under the provisions of the Family Support Act of 1988.

SEC. 6064. MODIFICATIONS TO SECTION 457.

Government
organization
and employees.

(a) **CODIFICATION OF EXCEPTION FOR CERTAIN PLANS.**—

(1) Subsection (e) of section 457 of the 1986 Code (as amended by section 1107 of the Reform Act) is amended by adding at the end thereof the following new paragraph:

“(11) **CERTAIN PLANS EXCEPTED.**—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation.”

(2) Subsection (d) of section 457 of the 1986 Code (as in effect on the day before the date of the enactment of the Reform Act) is amended by adding at the end thereof the following new paragraph:

“(10) **CERTAIN PLANS EXCEPTED.**—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability

pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation.”

(b) TREATMENT OF NONELECTIVE DEFERRED COMPENSATION OF NONEMPLOYEES.—

(1) Subsection (e) of section 457 of the 1986 Code (as amended by section 1107 of the Reform Act) is amended by adding at the end thereof the following new paragraph:

“(12) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION OF NONEMPLOYEES.—

“(A) IN GENERAL.—This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

“(B) NONELECTIVE DEFERRED COMPENSATION.—For purposes of subparagraph (A), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.”

(2) Subsection (d) of section 457 of the 1986 Code (as in effect on the day before the date of the enactment of the Reform Act) is amended by adding at the end thereof the following new paragraph:

“(11) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION OF NONEMPLOYEES.—

“(A) IN GENERAL.—This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

“(B) NONELECTIVE DEFERRED COMPENSATION.—For purposes of subparagraph (a), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.”

(c) SECTION NOT TO APPLY TO CHURCH PLANS.—Section 457(e) of the 1986 Code (as amended by section 1107 of the Reform Act) is amended by adding at the end thereof the following new paragraph:

“(13) EXCEPTION FOR CHURCH PLANS.—The term ‘eligible deferred compensation plan’ shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term ‘church’ has the meaning given such term by section 3121(w)(3)(A), including a qualified church-controlled organization (as defined in section 3121(w)(3)(B)).”

(d) EFFECTIVE DATE.—

(1) **IN GENERAL.—**The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

(2) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED PLANS.—

(A) IN GENERAL.—Section 457 of the 1986 Code (as in effect before and after the amendments made by section 1107 of the Reform Act) shall not apply to nonelective deferred compensation provided under a plan in existence on December 31, 1987, and maintained pursuant to a collective bargaining agreement.

(B) NONELECTIVE PLAN.—For purposes of this paragraph, a nonelective plan is a plan which covers a broad group of employees and under which the covered employees earn

nonelective deferred compensation under a definite, fixed, and uniform benefit formula.

(C) **TERMINATION.**—This paragraph shall cease to apply to a plan as of the effective date of the first material modification of the plan agreed to after December 31, 1987.

(3) **TREATMENT OF CERTAIN NONELECTIVE DEFERRED COMPENSATION.**—Section 457 of the 1986 Code shall not apply to amounts deferred under a nonelective deferred compensation plan maintained by an eligible employer described in section 457(e)(1)(A) of the 1986 Code (as in effect after the Reform Act)—

(A) if such amounts were deferred from periods before July 14, 1988, or

(B) if—

(i) such amounts are deferred from periods on or after such date pursuant to an agreement which—

(I) was in writing on such date, and

(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula, and

(ii) the individual with respect to whom the deferral is made was covered under such agreement on such date.

Subparagraph (B) shall not apply to any taxable year ending after the date on which any modification of the amount or formula described in subparagraph (B)(i)(II) agreed to in writing before January 1, 1989, is effective. The preceding sentence shall not apply to a modification agreed to in writing before January 1, 1989, which does not increase any benefit of participant. Amounts described in the first sentence of this paragraph shall be taken into account for purposes of applying section 457 of the 1986 Code to other amounts deferred under any eligible deferred compensation plan.

(4) **STUDY.**—The Secretary of the Treasury or his delegate shall conduct a study on the tax treatment of deferred compensation paid by State and local governments and tax-exempt organizations (including deferred compensation paid to independent contractors). Not later than January 1, 1990, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this paragraph together with such recommendations as he may deem advisable.

Reports.

26 USC 401 note.

SEC. 6065. EXCEPTION FOR GOVERNMENTAL PLANS.

In the case of plan years beginning before January 1, 1993, section 401(a)(26) of the 1986 Code shall not apply to any governmental plan (within the meaning of section 414(d) of such Code) with respect to employees who were participants in such plan on July 14, 1988.

SEC. 6066. AIR TRANSPORTATION OF CARGO AND OF PASSENGER TREATED AS SAME SERVICE FOR PURPOSES OF FRINGING BENEFITS INCLUSION.

(a) **IN GENERAL.**—Subsection (h) of section 132 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(8) AIR CARGO.—For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transportation furnished after December 31, 1987, in taxable years ending after such date. 26 USC 132 note.

6067. SPECIAL RULE FOR APPLYING SPIN-OFF RULES TO BRIDGE BANKS.

(a) IN GENERAL.—Section 414(l)(2) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(G) SPECIAL RULES FOR BRIDGE BANKS.—For purposes of this paragraph, in the case of a bridge bank established under section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i))—

“(i) such bank shall be treated as a member of any controlled group which includes any insured bank (as defined in section 3(h) of such Act (12 U.S.C. 1813(h)))—

“(I) which maintains a defined benefit plan,

“(II) which is closed by the appropriate bank regulatory authorities, and

“(III) any asset and liabilities of which are received by the bridge bank, and

“(ii) the requirements of this paragraph shall not be treated as met with respect to such plan unless during the 180-day period beginning on the date such insured bank is closed—

“(I) the bridge bank has the right to require the plan to transfer (subject to the provisions of this paragraph) not more than 50 percent of the excess assets (as defined in subparagraph (C)) to a defined benefit plan maintained by the bridge bank with respect to participants or former participants (including retirees and beneficiaries) in the original plan employed by the bridge bank or formerly employed by the closed bank, and

“(II) no other merger, spin-off, termination, or similar transaction involving the portion of the excess assets described in subclause (I) may occur without the prior written consent of the bridge bank.”

(b) STUDY.—The Secretary of the Treasury or his delegate, in consultation with the Federal Deposit Insurance Corporation, shall conduct a study with respect to the proper method of allocating assets in the case of a transaction to which the amendment made by subsection (a) applies. The Secretary of the Treasury shall not later than January 1, 1990, report the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. 26 USC 414 note.

(c) EFFECTIVE DATE.—The amendment made by this section shall have effect as if included in the amendments made by section 205(c) of this Act. Reports. 26 USC 414 note.

6068. INCOME AVERAGING ALLOWED TO LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES.

(a) IN GENERAL.—Section 402(e)(4) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(O) LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES.—If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this subsection, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this subparagraph, the balance to the credit of the alternate payee shall not include any amount payable to the employee.”

26 USC 402 note. (b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years ending after December 31, 1984.

SEC. 6069. INCREASE IN EMPLOYER REVERSION TAX.

(a) **IN GENERAL.**—Section 4980(a) of the 1986 Code is amended by striking out “10 percent” and inserting in lieu thereof “15 percent”.

26 USC 4980
note.

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply to reversions occurring on or after October 21, 1988.

(2) **EXCEPTION.**—The amendment made by subsection (a) shall not apply to any reversion on or after October 21, 1988, pursuant to a plan termination if—

(A) with respect to plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate required under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 21, 1988,

(B) with respect to plans subject to title I of such Act, a notice of intent to reduce future accruals required under section 204(h) of such Act was provided to participants in connection with the termination before October 21, 1988,

(C) with respect to plans not subject to title I or IV of such Act, the Board of Directors of the employer approved the termination or the employer took other binding action before October 21, 1988, or

(D) such plan termination was directed by a final order of a court of competent jurisdiction entered before October 21, 1988, and notice of such order was provided to participants before such date.

26 USC 89 note.

SEC. 6070. DEFINITION OF PART-TIME EMPLOYEE FOR PURPOSES OF SECTION 89.

For purposes of section 89(f) of the 1986 Code, in the case of a plan maintained by an employer which employs fewer than 10 employees on a normal working day during a plan year, section 89(h)(1)(B) of such Code shall be applied—

(1) by substituting “35 hours” for “17½ hours” in the case of a plan year beginning in 1989, and

(2) by substituting “25 hours” for “17½ hours” in the case of plan years beginning in 1990.

All persons treated as 1 employer for purposes of subsection (b), (c), (m), (n), or (o) of section 414 of the 1986 Code shall be treated as 1 employer for purposes of the preceding sentence.

6071. RURAL TELEPHONE COOPERATIVES PERMITTED TO HAVE QUALIFIED CASH OR DEFERRED ARRANGEMENTS.

IN GENERAL.—Paragraphs (1) and (2) of section 401(k) of the Code (relating to cash or deferred arrangements) are each amended by striking out “or a rural electric cooperative plan” and inserting in lieu thereof “or a rural cooperative plan”.

RURAL COOPERATIVE PLAN DEFINED.—

(1) Paragraph (7) of section 401(k) of the 1986 Code (as amended by title I) is amended to read as follows:

“(7) **RURAL COOPERATIVE PLAN.**—For purposes of this subsection—

“(A) **IN GENERAL.**—The term ‘rural cooperative plan’ means any pension plan—

“(i) which is a defined contribution plan (as defined in section 414(i)), and

“(ii) which is established and maintained by a rural cooperative.

“(B) **RURAL COOPERATIVE DEFINED.**—For purposes of subparagraph (A), the term ‘rural cooperative’ means—

“(i) any organization which—

“(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

“(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

“(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

“(iii) a cooperative telephone company described in section 501(c)(12), and

“(iv) an organization which is a national association of organizations described in clause (i), (ii), or (iii).”

(2) Subparagraph (B) of section 401(k)(4) of the 1986 Code (as amended by title I) is amended by striking out “rural electric plan” and inserting in lieu thereof “rural cooperative plan”.

AMENDMENTS TO SECTION 457.—Section 457 of the 1986 Code (amended by section 1107 of the Reform Act) is amended by striking out “rural electric cooperative plan” in subsection (c)(2) and inserting in lieu thereof “rural cooperative plan”.

EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

26 USC 401 note.

6072. STUDY OF TREATMENT OF CERTAIN TECHNICAL PERSONNEL.

The Secretary of the Treasury or his delegate shall conduct a study of the treatment provided by section 1706 of the Reform Act (relating to treatment of certain technical personnel). The report of the study shall be submitted not later than September 1, 1989, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Reports.

Subtitle D—Insurance Provisions

26 USC 801 note. **SEC. 6076. TREATMENT OF CERTAIN WORKERS' COMPENSATION FUNDS**

(a) **TREATMENT FOR TAXABLE YEARS BEGINNING BEFORE 1987.**—In the case of any taxable year beginning before January 1, 1987, the deficiency shall not be assessed against (and if assessed, shall not be collected from) any qualified group self-insurers' fund to the extent such deficiency is attributable to the timing of policyholder dividend deductions.

(b) **QUALIFIED GROUP SELF-INSURERS' FUND.**—For purposes of this section, the term "qualified group self-insurers' fund" means any group of 2 or more employers which has been in existence for not less than 2 years, and who enter into agreements to pool their liabilities under the State workers' disability compensation laws for the purpose of qualifying as a self-insurer under such laws, if

(1) the group has received a certificate of approval from, and is subject to regulation by, the State board or agency that is responsible for administering the State workers' disability compensation laws,

(2) each employer who is a member of the group, by written agreement, is jointly and severally bound to assume and discharge, by payment, any lawful judgment or award entered by a court of competent jurisdiction or by the State agency responsible for administering the State workers' disability compensation laws against a member of the group,

(3) the group is prohibited by State law or regulation from using the monies collected for a purpose other than to pay, or reserve against, claims under the State workers' disability compensation laws and expenses,

(4) the group is prohibited by State law or regulation from taking projected investment income into account in determining members' premiums,

(5) the group is required by State law or regulation to submit to the State board or agency that is responsible for administering the State workers' disability compensation laws an annual financial statement,

(6) the group's investments are limited by State law or regulation to bonds, notes, or other evidences of indebtedness issued or assumed or guaranteed by the United States of America, or an agency or instrumentality thereof, certificates of deposit in a federally insured bank, shares or savings deposits in a federally insured savings and loan association or credit union, and certificates of deposit issued by a commercial bank duly chartered under State law, and other investments which are approved by the State board or agency that is responsible for administering the State workers' disability compensation laws, and

(7) the group exclusively covers workers' compensation liability, is not a commercial insurance carrier or company licensed by the State board, agency, or commissioner responsible for regulating and licensing insurance carriers and companies, and is not subject to filing under the regulatory statements of the National Association of Insurance Commissioners.

SEC. 6077. SPECIAL ESTIMATED TAX PAYMENTS.

(a) **GENERAL RULE.**—Part III of subchapter L of chapter 1 of the 1986 Code (relating to provisions of general application) is amended by adding at the end thereof the following new section:

“SEC. 847. SPECIAL ESTIMATED TAX PAYMENTS.

“In the case of taxable years beginning after December 31, 1987, of an insurance company required to discount unpaid losses (as defined in section 846)—

“(1) **ADDITIONAL DEDUCTION.**—There shall be allowed as a deduction for the taxable year, if separate estimated tax payments are made as required by paragraph (2), an amount not to exceed the excess of—

“(A) the amount of the undiscounted, unpaid losses (as defined in section 846(b)) attributable to losses incurred after December 31, 1986, over

“(B) the amount of the related discounted, unpaid losses determined under section 846,

to the extent such amount was not deducted under this paragraph in a preceding taxable year. Section 6655 shall be applied to any taxable year without regard to the deduction allowed under the preceding sentence.

“(2) **SPECIAL ESTIMATED TAX PAYMENTS.**—The deduction under paragraph (1) shall be allowed only to the extent that special estimated tax payments are made in an amount equal to the tax benefit attributable to such deduction, on or before the date that any taxes (determined without regard to this section) for the taxable year for which the deduction is allowed are due to be paid. If a deduction would be allowed but for the fact that special estimated tax payments were not timely made, such deduction shall be allowed to the extent such payments are made within a reasonable time, as determined by the Secretary, if all interest and penalties, computed as if this sentence did not apply, are paid. If amounts are included in gross income under paragraph (5) or (6) for any taxable year and an additional tax is due for such year (or any other year) as a result of such inclusion, an amount of special estimated tax payments equal to such additional tax shall be applied against such additional tax. If, after any such payment is so applied, there is an adjustment reducing the amount of such additional tax, in lieu of any credit or refund for such reduction, a special estimated tax payment shall be treated as made in an amount equal to the amount otherwise allowable as a credit or refund. To the extent that a special estimated tax payment is not used to offset additional tax due for any of the first 15 taxable years beginning after the year for which the payment was made, such special estimated tax payment shall be treated as an estimated tax payment made under section 6655 for the 16th year after the year for which the payment was made.

“(3) **SPECIAL LOSS DISCOUNT ACCOUNT.**—Each company which is allowed a deduction under paragraph (1) shall, for purposes of this part, establish and maintain a special loss discount account.

“(4) **ADDITIONS TO SPECIAL LOSS DISCOUNT ACCOUNT.**—There shall be added to the special loss discount account for each taxable year an amount equal to the amount allowed as a deduction for the taxable year under paragraph (1).

"(5) SUBTRACTIONS FROM SPECIAL LOSS DISCOUNT ACCOUNT AND INCLUSION IN GROSS INCOME.—After applying paragraph (4), there shall be subtracted for the taxable year from the special loss discount account and included in gross income:

"(A) The excess (if any) of the amount in the special loss discount account with respect to losses incurred in each taxable year over the amount of the excess referred to in paragraph (1) with respect to losses incurred in that year, and

"(B) Any amount improperly subtracted from the special loss discount account under subparagraph (A) to the extent special estimated tax payments were used with respect to such amount.

"(6) RULES IN THE CASE OF LIQUIDATION OR TERMINATION OF TAXPAYER'S INSURANCE BUSINESS.—

"(A) IN GENERAL.—If a company liquidates or otherwise terminates its insurance business and does not transfer or distribute such business in an acquisition of assets referred to in section 381(a), the entire amount remaining in such special loss discount account shall be subtracted and included in gross income. Except in the case where a company transfers or distributes its insurance business in an acquisition of assets, referred to in section 381(a), if the company is not subject to the tax imposed by section 801 or section 831 for any taxable year, the entire amount in the account at the close of the preceding taxable year shall be subtracted from the account in such preceding taxable year and included in gross income.

"(B) ELIMINATION OF BALANCE OF PAYMENTS.—In any case to which subparagraph (A) applies, any special estimated tax payment remaining after the credit attributable to the inclusion under subparagraph (A) shall be voided.

"(7) MODIFICATION OF THE AMOUNT OF SPECIAL ESTIMATED TAX PAYMENTS IN THE EVENT OF SUBSEQUENT MARGINAL RATE REDUCTION OR INCREASE.—In the event of a reduction in any tax rate provided under section 11 for any tax year after the enactment of this section, the Secretary shall prescribe regulations providing for a reduction in the amount of any special estimated tax payments made for years before the effective date of such section 11 rate reductions. Such reduction in the amount of such payments shall reduce the amount of such payments to the amount that they would have been if the special deduction permitted under paragraph (1) had occurred during a year that the lower marginal rate under section 11 applied. Similar rules shall be applied in the event of a marginal rate increase.

"(8) TAX BENEFIT DETERMINATION.—The tax benefit attributable to the deduction under paragraph (1) shall be determined under regulations prescribed by the Secretary, by taking into account tax benefits that would arise from the carryback of any net operating loss for the year, as well as current year tax benefits. Tax benefits for the current year and carryback years shall include those that would arise from the filing of a consolidated return with another insurance company required to determine discounted, unpaid losses under section 846 without regard to the limitations on consolidation contained in section 1503(c).

“(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

“(A) providing for the separate application of this section with respect to each accident year, and

“(B) such adjustments in the application of this section as may be necessary to take into account the tax imposed by section 55.”

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter L of chapter 1 of the 1986 Code is amended by adding at the end thereof the following new item:

“Sec. 847. Special estimated tax payments.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

26 USC 847 note.

SEC. 6078. CHURCH SELF-FUNDED DEATH BENEFIT PLANS TREATED AS LIFE INSURANCE.

(a) IN GENERAL.—Section 7702 of the 1986 Code (defining life insurance contract) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) CERTAIN CHURCH SELF-FUNDED DEATH BENEFIT PLANS TREATED AS LIFE INSURANCE.—

“(1) IN GENERAL.—In determining whether any plan or arrangement described in paragraph (2) is a life insurance contract, the requirement of subsection (a) that the contract be a life insurance contract under applicable law shall not apply.

“(2) DESCRIPTION.—For purposes of this subsection, a plan or arrangement is described in this paragraph if—

“(A) such plan or arrangement provides for the payment of benefits by reason of the death of the individuals covered under such plan or arrangement, and

“(B) such plan or arrangement is provided by a church for the benefit of its employees and their beneficiaries, directly or through an organization described in section 414(e)(3)(A) or an organization described in section 414(e)(3)(B)(ii).

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) CHURCH.—The term ‘church’ means a church or a convention or association of churches.

“(B) EMPLOYEE.—The term ‘employee’ includes an employee described in section 414(e)(3)(B).”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendment made by section 221(a) of the Tax Reform Act of 1984.

26 USC 7702 note.

SEC. 6079. TREATMENT OF STRUCTURED SETTLEMENTS.

(a) TREATMENT UNDER MINIMUM TAX.—

(1) The last sentence of section 56(g)(4)(B)(iii) of the 1986 Code (as amended by title I) is amended to read as follows: “The preceding sentence shall not apply to any annuity contract which is held under a plan described in section 403(a) or which is described in section 72(u)(3)(C).”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 701 of the Reform Act.

26 USC 56 note.

(b) CERTAIN CREDITOR RIGHTS PERMITTED.—

(1) **IN GENERAL.**—Subsection (c) of section 130 of the 1986 Code (relating to certain personal injury liability assignments) is amended—

(A) by striking out subparagraph (C) of paragraph (2) and redesignating subparagraphs (D) and (E) of paragraph (2) as subparagraphs (C) and (D), respectively, and

(B) by adding at the end thereof the following new sentence:

“The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made without regard to any provision of such assignment which grants the recipient rights as a creditor greater than those of a general creditor.”

26 USC 130 note.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to assignments after the date of the enactment of this Act.

SEC. 6080. VARIABLE CONTRACTS INVESTED IN GOVERNMENT SECURITIES PERMITTED.

(a) **IN GENERAL.**—Subsection (h) of section 817 of the 1986 Code (relating to treatment of certain nondiversified contracts) is amended by adding at the end thereof the following new paragraph:

“(6) **GOVERNMENT SECURITIES FUNDS.**—In determining whether a segregated asset account is adequately diversified for purposes of paragraph (1), each United States Government agency or instrumentality shall be treated as a separate issuer.”

26 USC 817 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987

Subtitle E—Excise Tax Provisions

SEC. 6101. AUTHORITY TO PRESCRIBE TOLERANCES FOR THE VOLUME OF WINE IN BOTTLES FOR PURPOSES OF THE EXCISE TAX ON WINE.

(a) **IN GENERAL.**—Section 5041 of the 1986 Code (relating to imposition and rate of tax on wine) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) **TOLERANCES.**—Where the Secretary finds that the revenue will not be endangered thereby, he may by regulation prescribe tolerances (but not greater than $\frac{1}{2}$ of 1 percent) for bottles and other containers, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a bottle or other container are within the limit of the applicable tolerance prescribed.”

26 USC 5041
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to wine removed after December 31, 1988.

SEC. 6102. WHOLESALE DISTRIBUTORS TO ADMINISTER CLAIMS FOR REFUND OF GASOLINE TAX.

(a) **IN GENERAL.**—Subsection (a) of section 6416 of the 1986 Code (relating to certain taxes and services) is amended by adding at the end thereof the following new paragraph:

“(4) **WHOLESALE DISTRIBUTORS TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.**—

“(A) IN GENERAL.—For purposes of this subsection, a wholesale distributor who purchases any product on which tax imposed by section 4081 has been paid and who sells the product to its ultimate purchaser shall be treated as the person (and the only person) who paid such tax.

“(B) WHOLESALE DISTRIBUTOR.—For purposes of subparagraph (A), the term ‘wholesale distributor’ has the meaning given such term by section 4092(b)(2) (determined by substituting ‘any product taxable under section 4081’ for ‘a taxable fuel’ therein).”

) **EFFECTIVE DATE.**—The amendment made by this section shall apply to fuel sold by wholesale distributors (as defined in section 6(a)(4)(B) of the 1986 Code, as added by this section) after September 30, 1988.

26 USC 6416
note.

. 6103. AUTHORITY TO EXEMPT ARTICLES FROM EXCISE TAX ON HEAVY TRUCKS AND TRAILERS WHERE BENEFIT ACCRUES TO UNITED STATES.

) **IN GENERAL.**—Section 4293 of the 1986 Code is amended by striking “section 4051,” after “section 4041,”.

) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

26 USC 4293
note.

. 6104. APPLICATION OF REDUCED GASOLINE TAX RATE TO BLENDEES.

) **IN GENERAL.**—Paragraph (1) of section 4081(c) of the 1986 Code relating to gasoline mixed with alcohol at refinery, etc.) is amended by adding after the 1st sentence the following new sentence: “Subject to such terms and conditions as the Secretary may prescribe including the application of section 4101, the treatment under the preceding sentence also shall apply to use in producing gasohol after the time of such removal or sale.”

) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on October 1, 1989.

26 USC 4081
note.

6105. CERTAIN EDUCATIONAL INSTITUTIONS EXEMPT FROM USER FEES ON PERMITS FOR INDUSTRIAL USE OF SPECIALLY DENATURED DISTILLED SPIRITS.

) **IN GENERAL.**—Section 5276 of the 1986 Code (relating to distillation tax) is amended by adding at the end thereof the following new subsection:

) **EXEMPTION FOR CERTAIN EDUCATIONAL INSTITUTIONS.**—Subsection (a) shall not apply with respect to any scientific university, college of learning, or institution of scientific research which—

“(1) is issued a permit under section 5271(a)(2), and

“(2) with respect to any calendar year during which such permit is in effect, procures less than 25 gallons of specially denatured distilled spirits for experimental or research use but not for consumption (other than organoleptic tests) or sale.”

CONFORMING AMENDMENT.—Section 5276(a) of the 1986 Code is amended by striking out “A permit” and inserting in lieu thereof “except as provided in subsection (c), a permit”.

EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1989.

26 USC 5276
note.

SEC. 6106. SMALL PRODUCERS EXEMPT FROM OCCUPATIONAL TAX ON DISTILLED SPIRITS PLANTS.

(a) **IN GENERAL.**—Section 5081 of the 1986 Code (relating to imposition and rate of occupational tax) is amended by adding at the end thereof the following new subsection:

“(c) **EXEMPTION FOR SMALL PRODUCERS.**—Subsection (a) shall not apply with respect to any taxpayer who is a proprietor of an eligible distilled spirits plant (as defined in section 5181(c)(4)).”

(b) **CONFORMING AMENDMENT.**—Paragraph (1) of section 5081(b) of the 1986 Code (relating to reduced rates for small proprietors) is amended by inserting “not described in subsection (c)” after “taxpayer”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on July 1, 1989.

26 USC 5081
note.

SEC. 6107. QUARTERLY PAYMENT OF ARCHERY EXCISE TAX.

(a) **IN GENERAL.**—Subsection (d) of section 6302 of the 1986 Code (relating to mode or time of collection) is amended to read as follows:

“(d) **TIME FOR PAYMENT OF MANUFACTURERS’ EXCISE TAX ON SPORTING GOODS.**—The taxes imposed by subsections (a) and (b) of section 4161 (relating to taxes on sporting goods) shall be due and payable on the date for filing the return for such taxes.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to articles sold by the manufacturer, producer, or importer after December 31, 1988.

26 USC 6302
note.

SEC. 6108. EXTENSION OF TIME FOR ENACTING AUTHORIZING LEGISLATION RELATING TO THE OIL SPILL LIABILITY TRUST FUND.

Subparagraph (B) of section 4611(f)(2) of the 1986 Code (defining qualified authorizing legislation) is amended by striking out “September 1, 1987” and inserting in lieu thereof “December 31, 1990”.

SEC. 6109. DONATED CARGO EXEMPT FROM HARBOR MAINTENANCE TAX.

(a) **GENERAL RULE.**—Section 4462 of the 1986 Code (relating to definitions and special rules) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) **EXEMPTION FOR HUMANITARIAN AND DEVELOPMENT ASSISTANCE CARGOS.**—No tax shall be imposed under this subchapter on any nonprofit organization or cooperative for cargo which is owned or financed by such nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in humanitarian or development assistance overseas.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on April 1, 1987.

26 USC 4462
note.

SEC. 6110. RELAY CARGO.

(a) **IN GENERAL.**—Subsection (g) of section 4462 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(3) **RELAY CARGO.**—Only 1 tax shall be imposed under section 4461(a) on cargo (moving under a single bill of lading) which is unloaded from one vessel and loaded onto another vessel at any port in the United States for relay to or from any port in Alaska, Hawaii, or any possession of the United States. For purposes of this paragraph, the term ‘cargo’ does not include any item not treated as cargo under subsection (b)(2).”

b) **EFFECTIVE DATE.**—The amendment made by this section shall have effect on the date of the enactment of this Act. 26 USC 4462 note.

§ 6111. CLARIFICATION OF MEANING OF MANUFACTURE UNDER TRUCK EXCISE TAX.

a) **IN GENERAL.**—Paragraph (1) of section 4052(a) of the 1986 Code (defining first retail sale) is amended by striking out “manufacture, production” and inserting in lieu thereof “production, manufacture”.

c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on January 1, 1988. 26 USC 4052 note.

Subtitle F—Foreign Provisions

§ 6126. DUAL RESIDENT COMPANIES.

26 USC 1502 note.

a) **GENERAL RULE.**—In the case of a transaction which—

(1) involves the transfer after the date of the enactment of this Act by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

(2) qualifies, pursuant to Revenue Ruling 87-27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code,

then, solely for purposes of applying Treasury Regulation section 1.102-19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group with the common parent.

b) **TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.**—

(1) **IN GENERAL.**—In any case to which subsection (a) applies, for purposes of the 1986 Code—

(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

(i) be reduced by the net amount of any such income, and

(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

(2) **LIMITATION.**—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

(3) **BASIS ADJUSTMENTS NOT APPLICABLE.**—To the extent paragraph (1) applies to any item of income, there shall be no increase in basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under

section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

(4) **RECOGNITION OF GAIN.**—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

(A) the fair market value of the property transferred, over

(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

(c) **DEFINITIONS.**—For purposes of this section—

(1) **COMMON PARENT.**—The term “common parent” means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

(2) **QUALIFIED EXCESS LOSS ACCOUNT.**—The term “qualified excess loss account” means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

(A) to taxable years beginning before January 1, 1988, and

(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country. The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

(3) **NET AMOUNT.**—The net amount of any item of income is the amount of such income reduced by allocable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

(4) **SECOND SAME COUNTRY CORPORATION MAY BE TREATED AS DOMESTIC CORPORATION IN CERTAIN CASES.**—If—

(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph, such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such

other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a)).

SEC. 6127. ELECTION TO BE TREATED AS QUALIFIED ELECTING FUND TO BE MADE BY TAXPAYER.

(a) **GENERAL RULE.**—Section 1295 of the 1986 Code (defining qualified electing fund) is amended to read as follows:

“SEC. 1295. QUALIFIED ELECTING FUND.

“(a) **GENERAL RULE.**—For purposes of this part, any passive foreign investment company shall be treated as a qualified electing fund with respect to the taxpayer if—

“(1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and

“(2) such company complies with such requirements as the Secretary may prescribe for purposes of—

“(A) determining the ordinary earnings and net capital gain of such company, and

“(B) otherwise carrying out the purposes of this subpart.

“(b) ELECTION.—

“(1) **IN GENERAL.**—A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

“(2) **WHEN MADE.**—An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company.”

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 1291(d) of the 1986 Code (as amended by title I) is amended by striking out “for each” in the material preceding subparagraph (A) and inserting in lieu thereof “with respect to the taxpayer for each”.

(2) Subparagraphs (A)(i) and (B)(i) of section 1291(d)(2) of the 1986 Code (as amended by title I) are each amended by striking out “for a taxable year” and inserting in lieu thereof “with respect to the taxpayer for a taxable year”.

(c) EFFECTIVE DATE.—

(1) **IN GENERAL.**—The amendments made by this section shall take effect as if included in the amendments made by section 1235 of the Reform Act.

(2) **TIME FOR MAKING ELECTION.**—The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of the enactment of this Act.

SEC. 6128. TREATMENT OF CERTAIN UNITED STATES AFFILIATE OBLIGATIONS.

26 USC 871 note. (a) **GENERAL RULE.**—Subparagraph (B) of section 127(g)(3) of the Tax Reform Act of 1984 is amended by inserting before the period at the end thereof the following: “as such principles are applied in Revenue Ruling 86-6, except that the maximum debt-to-equity ratio described in such Revenue Rulings shall be increased from 5-to-1 to 25-to-1”.

26 USC 871 note. (b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 6129. TREATMENT OF CERTAIN INSURANCE BRANCHES OF FOREIGN CORPORATIONS.

(a) **GENERAL RULE.**—Section 964 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new subsection:

“(d) **TREATMENT OF CERTAIN BRANCHES.**—

“(1) **IN GENERAL.**—For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

“(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

“(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

“(2) **QUALIFIED INSURANCE BRANCH.**—For purposes of paragraph (1), the term ‘qualified insurance branch’ means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

“(A) separate books and accounts are maintained for such branch,

“(B) the principal place of business of such branch is in such foreign country,

“(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

“(D) an election under this paragraph applies to such branch.

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

“(3) **REGULATIONS.**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.”

26 USC 964 note. (b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years of foreign corporations beginning after December 31, 1988.

SEC. 6130. TREATMENT OF CERTAIN INSTRUMENTS UNDER FOREIGN CURRENCY RULES.

(a) **GENERAL RULE.**—Clause (iii) of section 988(c)(1)(B) of the 1986 Code (as amended by title I) is amended by striking out “unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year”.

(b) **SPECIAL RULES.**—Paragraph (1) of section 988(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

“(D) **EXCEPTION FOR CERTAIN INSTRUMENTS MARKED TO MARKET.**—

“(i) **IN GENERAL.**—Clause (iii) of subparagraph (B) shall not apply to any regulated futures contract or nonequity option which would be marked to market under section 1256 if held on the last day of the taxable year.

“(ii) **ELECTION OUT.**—

“(I) **IN GENERAL.**—The taxpayer may elect to have clause (i) not apply to such taxpayer. Such an election shall apply to contracts held at any time during the taxable year for which such election is made or any succeeding taxable year unless such election is revoked with the consent of the Secretary.

“(II) **TIME FOR MAKING ELECTION.**—Except as provided in regulations, an election under subclause (I) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the taxpayer holds a contract described in clause (i)).

“(III) **SPECIAL RULE FOR PARTNERSHIPS, ETC.**—In the case of a partnership, an election under subclause (I) shall be made by each partner separately. A similar rule shall apply in the case of an S corporation.

“(iii) **TREATMENT OF CERTAIN PARTNERSHIPS.**—This subparagraph shall not apply to any income or loss of a partnership for any taxable year if such partnership made an election under subparagraph (E)(iii)(V) for such year or any preceding year.

“(E) **SPECIAL RULES FOR CERTAIN FUNDS.**—

“(i) **IN GENERAL.**—In the case of a qualified fund, clause (iii) of subparagraph (B) shall not apply to any instrument which would be marked to market under section 1256 if held on the last day of the taxable year (determined after the application of clause (iv)).

“(ii) **SPECIAL RULE WHERE ELECTING PARTNERSHIP DOES NOT QUALIFY.**—If any partnership made an election under clause (iii)(V) for any taxable year and such partnership has a net loss for such year or any succeeding year from instruments referred to in clause (i), the rules of clauses (i) and (iv) shall apply to any such loss year whether or not such partnership is a qualified fund for such year.

“(iii) **QUALIFIED FUND DEFINED.**—For purposes of this subparagraph, the term ‘qualified fund’ means any partnership if—

“(I) at all times during the taxable year (and during each preceding taxable year to which an election under subclause (V) applied), such partnership has at least 20 partners and no single partner owns more than 20 percent of the interests in the capital or profits of the partnership,

“(II) the principal activity of such partnership for such taxable year (and each such preceding taxable year) consists of buying and selling options, futures, or forwards with respect to commodities,

“(III) at least 90 percent of the gross income of the partnership for the taxable year (and for each such preceding taxable year) consisted of income or gains described in subparagraph (A), (B), or (G) of section 7704(d)(1) or gain from the sale or disposition of capital assets held for the production of interest or dividends,

“(IV) no more than a de minimis amount of the gross income of the partnership for the taxable year (and each such preceding taxable year) was derived from buying and selling commodities, and

“(V) an election under this subclause applies to the taxable year.

An election under subclause (V) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the partnership holds an instrument referred to in clause (i)). Any such election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

“(iv) **TREATMENT OF CERTAIN CURRENCY CONTRACTS.**—

“(I) **IN GENERAL.**—Except as provided in regulations, in the case of a qualified fund, any bank forward contract, any foreign currency futures contract traded on a foreign exchange, or to the extent provided in regulations any similar instrument, which is not otherwise a section 1256 contract shall be treated as a section 1256 contract for purposes of section 1256.

“(II) **GAINS AND LOSSES TREATED AS SHORT-TERM.**—In the case of any instrument treated as a section 1256 contract under subclause (I), subparagraph (A) of section 1256(a)(3) shall be applied by substituting ‘100 percent’ for ‘40 percent’ (and subparagraph (B) of such section shall not apply).

“(v) **SPECIAL RULES FOR CLAUSE (iii)(I).**—

“(I) **CERTAIN GENERAL PARTNERS.**—The interest of a general partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) for any taxable year of the partnership if, for the taxable year of the partner in which such partnership taxable year ends, such partner (and each corporation filing a

consolidated return with such partner) had no ordinary income or loss from a section 988 transaction which is foreign currency gain or loss (as the case may be).

“(II) TREATMENT OF INCENTIVE COMPENSATION.—For purposes of clause (iii)(I), any income allocable to a general partner as incentive compensation based on profits rather than capital shall not be taken into account in determining such partner’s interest in the profits of the partnership.

“(III) TREATMENT OF TAX-EXEMPT PARTNERS.—Except as provided in regulations, the interest of a partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) if none of the income of such partner from such partnership is subject to tax under this chapter (whether directly or through 1 or more pass-thru entities).

“(IV) LOOK-THRU RULE.—In determining whether the requirements of clause (iii)(I) are met with respect to any partnership, except to the extent provided in regulations, any interest in such partnership held by another partnership shall be treated as held proportionately by the partners in such other partnership.

“(vi) OTHER SPECIAL RULES.—For purposes of this subparagraph—

“(I) RELATED PERSONS.—Interests in the partnership held by persons related to each other (within the meaning of sections 267(b) and 707(b)) shall be treated as held by 1 person.

“(II) PREDECESSORS.—References to any partnership shall include a reference to any predecessor thereof.

“(III) INADVERTENT TERMINATIONS.—Rules similar to the rules of section 7704(e) shall apply.

“(IV) TREATMENT OF CERTAIN DEBT INSTRUMENTS.—For purposes of clause (iii)(IV), any debt instrument which is a section 988 transaction shall be treated as a commodity.”

(c) AMENDMENT OF SECTION 1092(b).—Paragraph (2) of section 1092(b) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(D) TIMING AND CHARACTER AUTHORITY.—The regulations prescribed under paragraph (1) shall include regulations relating to the timing and character of gains and losses in case of straddles where at least 1 position is ordinary and at least 1 position is capital.”

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after October 21, 1988.

(2) TIME FOR MAKING ELECTION.—The time for making any election under subparagraph (D) or (E) of section 988(c)(1) of the 1986 Code shall not expire before the date 30 days after the date of the enactment of this Act.

(3) TRANSITIONAL RULES.—

(A) The requirements of subclause (IV) of section 988(c)(1)(E)(iii) of the 1986 Code (as added by subsection (b)) shall not apply to periods before the date of the enactment of this Act.

(B) In the case of any partner in an existing partnership, the 20-percent ownership requirements of subclause (I) of such section 988(c)(1)(E)(iii) shall be treated as met during any period during which such partner does not own a percentage interest in the capital or profits of such partnership greater than 33 1/3 percent (or, if lower, the lowest such percentage interest of such partner during any prior period after October 21, 1988, during which such partnership is in existence). For purposes of the preceding sentence, the term “existing partnership” means any partnership if—

(i) such partnership was in existence on October 21, 1988, and principally engaged on such date in buying and selling options, futures, or forwards with respect to commodities, or

(ii) a registration statement was filed with respect to such partnership with the Securities and Exchange Commission on or before such date and such registration statement indicated that the principal activity of such partnership will consist of buying and selling instruments referred to in clause (i).

SEC. 6131. TREATMENT OF INSURANCE COMPANIES UNDER CHAIN DEFICIT RULE.

(a) **IN GENERAL.**—Subparagraph (B) of section 952(c)(1) of the 1986 Code is amended by adding at the end thereof the following new clause:

“(vii) **SPECIAL RULES FOR INSURANCE INCOME.**—

“(I) **IN GENERAL.**—An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

“(II) **SPECIAL RULES FOR AFFILIATED GROUPS.**—In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect as if included in the amendments made by section 1221(f) of the Reform Act.

SEC. 6132. VIRGIN ISLANDS TREATED AS QUALIFIED BASIN COUNTRY.

(a) **IN GENERAL.**—Subparagraph (B) of section 936(d)(4) of the 1986 Code is amended by inserting “and the Virgin Islands” after “section 274(h)(6)(A)”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to investments made after the date of the enactment of this Act.

26 USC 936 note.

SEC. 6133. TREATMENT OF CERTAIN UNITED STATES OBLIGATIONS HELD BY POSSESSION BANKS.

(a) **IN GENERAL.**—Subsection (e) of section 882 of the 1986 Code is amended—

(1) by inserting “which is not portfolio interest (as defined in section 881(c)(2))” before “shall”, and

(2) by striking out the last sentence thereof.

(b) **EXCLUSION FROM BRANCH PROFITS TAX.**—Paragraph (2) of section 884(d) of the 1986 Code is amended by striking out “or” at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof “, or” and by inserting after subparagraph (D) the following new subparagraph:

“(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e).”

Business and industry.

(c) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1988.

26 USC 882 note.

SEC. 6134. TREATMENT OF CERTAIN GAMBLING WINNINGS RECEIVED BY NONRESIDENT ALIENS.

(a) **EXEMPTION FROM TAX.**—

(1) Section 871 of the 1986 Code (relating to tax on non-resident alien individuals) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) **EXEMPTION FOR CERTAIN GAMBLING WINNINGS.**—No tax shall be imposed under paragraph (1)(A) of subsection (a) on the proceeds from a wager placed in any of the following games: blackjack, baccarat, craps, roulette, or big-6 wheel. The preceding sentence shall not apply in any case where the Secretary determines by regulation that the collection of the tax is administratively feasible.”

(2) Subsection (c) of section 1441 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(11) **CERTAIN GAMBLING WINNINGS.**—No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(j).”

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

26 USC 871 note.

SEC. 6135. ELECTION TO BE TREATED AS DOMESTIC CORPORATION.

(a) **IN GENERAL.**—Section 953 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(d) **ELECTION BY FOREIGN INSURANCE COMPANY TO BE TREATED AS DOMESTIC CORPORATION.**—

“(1) **IN GENERAL.**—If—

“(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting ‘25 percent

or more' for 'more than 50 percent' and by using the definition of United States shareholder under 953(c)(1)(A)),

"(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

"(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

"(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty, for purposes of this title, such corporation shall be treated as a domestic corporation.

"(2) PERIOD DURING WHICH ELECTION IS IN EFFECT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(B) TERMINATION.—If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

"(3) TREATMENT OF LOSSES.—If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss (as defined in section 1503(d)).

"(4) EFFECT OF ELECTION.—

"(A) IN GENERAL.—For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

"(B) EXCEPTION FOR PRE-1988 EARNINGS AND PROFIT.—

"(i) IN GENERAL.—Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be included in the gross income of the persons holding stock in such corporation by reason of subparagraph (A).

"(ii) TREATMENT OF DISTRIBUTIONS.—For purposes of this title, any distribution made by a corporation to which an election under paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

"(iii) CERTAIN RULES TO CONTINUE TO APPLY TO PRE-1988 EARNINGS.—The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a corporation to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

“(iv) SPECIFIED PROVISIONS.—The provisions specified in this clause are:

“(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

“(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A).

“(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

“(5) EFFECT OF TERMINATION.—For purposes of section 367, if—

“(A) an election is made by a corporation under paragraph (1) for any taxable year, and

“(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

“(6) ADDITIONAL TAX ON CORPORATION MAKING ELECTION.—

“(A) IN GENERAL.—If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

“(B) AMOUNT OF TAX.—The amount of tax determined under this paragraph shall be equal to the lesser of—

“(i) $\frac{3}{4}$ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or

“(ii) \$1,500,000.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

26 USC 953 note.

SEC. 6136. TAX EXEMPTION FOR ENJEBI COMMUNITY TRUST FUND.

(a) IN GENERAL.—Any earnings on, and distributions from, the Enjebi Community Trust Fund created under section 103 of the Compact of Free Association Act of 1985 shall be exempt from all Federal, State, or local taxation.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to all taxable years whether beginning before, on, or after the date of the enactment of this Act.

48 USC 1681 note.

SEC. 6137. APPLICATION OF SECTION 912 TO JUDICIAL EMPLOYEES.

(a) IN GENERAL.—Section 912(2) of the 1986 Code is amended by inserting “(or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations)” after “President”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to allowances received after October 12, 1987, in taxable years ending after such date.

26 USC 912 note.

SEC. 6138. STUDY OF DEFINITION OF UNITED STATES RESIDENT.

(a) **IN GENERAL.**—The Secretary of the Treasury or his delegate shall conduct a study of section 7701(b) of the Internal Revenue Code of 1986, relating to the determination as to whether a person is a United States resident for purposes of Federal tax laws. Such study shall include an examination of—

(1) the effect such determination has on Federal tax administration and investment flows between the United States and other countries,

(2) the coordination of such determination with any treaty obligations of the United States,

(3) how such determination compares with the way such determination is made by our major trading partners, and

(4) any estimated revenue gain or loss which would result from modifying such determination.

(b) **REPORT.**—The Secretary of the Treasury or his delegate shall report before May 1, 1989, the results of the study conducted under subsection (a) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 6139. SUNSET OF TREATY PROVISIONS.

(a) **IN GENERAL.**—No provisions of the Tax Convention with the United Kingdom (on behalf of Bermuda) or the Tax Convention with Barbados, whether entered into on, before, or after the date of enactment of this Act shall prevent application of any provision of the Internal Revenue Code of 1986 imposing insurance excise taxes. In the case of a treaty entered into after the date of enactment of this Act, the preceding sentence shall not apply if such treaty by specific reference to this section of this Act clearly expresses the intent to override the provisions of this section.

(b) **SPECIAL RULE FOR CERTAIN TREATIES.**—In the case of any treaty in effect on December 31, 1989, subsection (a) shall not apply to any premium allocable to insurance coverage for periods before January 1, 1990.

48 USC 1424c
note.

SEC. 6140. TREATMENT OF CERTAIN AWARDS BY THE DISTRICT COURT OF GUAM.

For purposes of the internal revenue laws of the United States and Guam, gross income shall not include any amount received pursuant to any claim over which the District Court of Guam has jurisdiction by reason of section 204 of Public Law 95-134 (commonly referred to as the Omnibus Territories Act of 1977). This section shall be effective for taxable years beginning after December 31, 1985.

Subtitle G—Estate Tax Provisions**SEC. 6151. TREATMENT OF CERTAIN RENTS UNDER SECTION 2032A.**

(a) **GENERAL RULE.**—Subparagraph (A) of section 2032A(b)(5) of the 1986 Code (relating to special rules for surviving spouse) is amended by adding at the end thereof the following new sentence: "For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis."

(b) **EFFECTIVE DATE.**—

26 USC 2032A
note.

(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply with respect to rentals occurring after December 31, 1976.

(2) **WAIVER OF STATUTE OF LIMITATIONS.**—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore is filed before the date 1 year after the date of the enactment of this Act.

SEC. 6152. CLARIFICATION OF TREATMENT OF JOINT AND SURVIVOR ANNUITIES UNDER QTIP RULES.

(a) **ESTATE TAX.**—Paragraph (7) of section 2056(b) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

“(C) **TREATMENT OF SURVIVOR ANNUITIES.**—In the case of an annuity where only the surviving spouse has the right to receive payments before the death of such surviving spouse—

“(i) the interest of such surviving spouse shall be treated as a qualifying income interest for life, and

“(ii) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by section 2001.

An election under clause (ii), once made, shall be irrevocable.”

(b) **GIFT TAX.**—Subsection (f) of section 2523 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

“(6) **TREATMENT OF JOINT AND SURVIVOR ANNUITIES.**—In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die—

“(A) the donee spouse’s interest shall be treated as a qualifying income interest for life,

“(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

“(C) paragraph (5) and section 2519 shall not apply to the donor spouse’s interest in the annuity, and

“(D) if the donee spouse dies before the donor spouse, no amount shall be includible in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable.”

(c) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection—

(A) the amendment made by subsection (a) shall apply with respect to decedents dying after December 31, 1981, and

(B) the amendment made by subsection (b) shall apply to transfers after December 31, 1981.

(2) NOT TO APPLY TO EXTENT INCONSISTENT WITH PRIOR RETURN.—In the case of any estate or gift tax return filed before the date of the enactment of this Act, the amendments made by this section shall not apply to the extent such amendments would be inconsistent with the treatment of the annuity on such return unless the executor or donor (as the case may be) otherwise elects under this paragraph before the day 2 years after the date of the enactment of this Act.

(3) EXTENSION OF TIME FOR ELECTION OUT.—The time for making an election under section 2056(b)(7)(C)(ii) or 2523(f)(6)(B) of the 1986 Code (as added by this subsection) shall not expire before the day 2 years after the date of the enactment of this Act (and, if such election is made within the time permitted under this paragraph, the requirement of such section 2056(b)(7)(C)(ii) that it be made on the return shall not apply).

Subtitle H—Tax-Exempt Bond Provisions

SEC. 6176. CLARIFICATION OF SMALL ISSUE BOND DEFINITION OF MANUFACTURING FACILITY.

(a) IN GENERAL.—Subparagraph (C) of section 144(a)(12) of the 1986 Code (defining manufacturing facility) is amended by adding at the end thereof the following new sentence: “For purposes of the 1st sentence of this subparagraph, the term ‘manufacturing facility’ includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this sentence) if—

“(i) such facilities are located on the same site as the manufacturing facility, and

“(ii) not more than 25 percent of the net proceeds of the issue are used to provide such facilities.”

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to bonds issued after the date of the enactment of this Act.

(2) REFUNDINGS.—The amendment made by subsection (a) shall not apply to any bond issued to refund (or which is part of a series of bonds issued to refund) a bond issued on or before the date of the enactment of this Act if—

(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue, and

(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b) of the 1986 Code.

SEC. 6177. RULES APPLICABLE TO TAX AND REVENUE ANTICIPATION BONDS.

(a) CHANGE IN PERIOD USED TO DETERMINE CUMULATIVE CASH FLOW DEFICIT.—Subclause (III) of section 148(f)(4)(B)(iii) of the 1986 Code (relating to safe harbor for determining when proceeds of tax and revenue anticipation bonds are expended) is amended by striking

out “the earliest of the maturity date of the issue, the date 6 months after such date of issuance,” and inserting in lieu thereof “the earlier of the date 6 months after such date of issuance.”

(b) **DUE DATE FOR LAST INSTALLMENT OF ARBITRAGE REBATE.**—Paragraph (3) of section 148(f) of the 1986 Code is amended by adding at the end thereof the following new sentence: “In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

26 USC 148 note.

SEC. 6178. AMENDMENT TO MORTGAGE BOND PURCHASE PRICE REGULATIONS.

The Secretary of the Treasury or his delegate shall amend the regulations relating to mortgage bond purchase price requirements, with respect to any lease with a remaining term of at least 35 years and a specified ground rent for at least the first 10 years of such term but not for the entire term, to provide for a capitalized value of such lease equal to the present value of the current ground rent projected over the remaining term of the lease and discounted at 3 percent or such other discount rate as the Secretary establishes. If such amendment is not made before the date of the enactment of this Act, such regulations shall be considered to include such amendment with respect to bonds issued after such date.

SEC. 6179. APPLICATION OF SECURITY INTEREST TEST TO BOND FINANCING OF HAZARDOUS WASTE CLEAN-UP ACTIVITIES.

26 USC 141 note.

Before January 1, 1989, the Secretary of the Treasury or his delegate shall issue guidance concerning the application of the private security or payment test under section 141(b)(2) of the Internal Revenue Code of 1986 to tax-exempt bond financing by State and local governments of hazardous waste clean-up activities conducted by such governments where some of the activities occur on privately owned land.

SEC. 6180. TAX-EXEMPT FINANCING FOR CERTAIN RAIL FACILITIES.

(a) **IN GENERAL.**—Subsection (a) of section 142 of the 1986 Code (relating to exempt facility bonds) is amended—

(1) by striking out “or” at the end of paragraph (9),

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof “, or”, and

(3) by adding at the end thereof the following new paragraph: “(11) high-speed intercity rail facilities.”

(b) **DEFINITION AND SPECIAL RULES FOR HIGH-SPEED INTERCITY RAIL FACILITIES.**—

(1) **IN GENERAL.**—Section 142 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(i) **HIGH-SPEED INTERCITY RAIL FACILITIES.**—

“(1) For purposes of subsection (a)(11), the term ‘high-speed intercity rail facilities’ means any facility (not including rolling stock) for the fixed guideway rail transportation of passengers and their baggage between metropolitan statistical areas (within the meaning of section 143(k)(2)(B)) using vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops, but only if such facility

will be made available to members of the general public as passengers.

"(2) **ELECTION BY NONGOVERNMENTAL OWNERS.**—A facility shall be treated as described in subsection (a)(11) only if any owner of such facility which is not a governmental unit irrevocably elects not to claim—

"(A) any deduction under section 167 or 168, and

"(B) any credit under this subtitle,

with respect to the property to be financed by the net proceeds of the issue.

"(3) **USE OF PROCEEDS.**—A bond issued as part of an issue described in subsection (a)(11) shall not be considered an exempt facility bond unless any proceeds not used within a 3-year period of the date of the issuance of such bond are used (not later than 6 months after the close of such period) to redeem bonds which are part of such issue."

(2) **USE OF FACILITIES.**—Subsection (c) of section 142 of the 1986 Code (relating to special rules for airport, docks and wharves, and mass commuting facilities) is amended—

(A) by striking out "paragraph (1), (2), or (3) of subsection (a)" each place it appears in paragraphs (1) and (2) thereof and inserting in lieu thereof "paragraph (1), (2), (3) or (11) of subsection (a)", and

(B) by striking out "AND MASS COMMUTING FACILITIES" in the heading thereof and inserting in lieu thereof "MASS COMMUTING FACILITIES AND HIGH-SPEED INTERCITY RAIL FACILITIES".

(3) **PARTIAL EXCLUSION FROM VOLUME CAP.**—Subsection (g) of section 146 of the 1986 Code (relating to an exception for certain bonds) is amended—

(A) by striking out "and" at the end of paragraph (2),

(B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and", and

(C) by adding at the end thereof the following new paragraph:

"(3) 75 percent of any exempt facility bond issued as part of an issue described in paragraph (11) of section 142(a) (relating to high-speed intercity rail facilities)."

(4) **LIMITATION REMOVED ON USE OF BOND PROCEEDS FOR LAND ACQUISITION.**—Paragraph (3) of section 147(c) of the 1986 Code (relating to limitation on use for land acquisition) is amended by inserting "high-speed intercity rail facility" after "mass commuting facility" each place it appears.

(5) **SPECIAL RULE FOR PUBLIC APPROVAL.**—Paragraph (3) of section 147(f) of the 1986 Code (relating to public approval required for private activity bonds) is amended—

(A) by inserting "or high-speed intercity rail facilities" after "airport" each place it appears, and

(B) by inserting "OR HIGH-SPEED INTERCITY RAIL FACILITIES" after "AIRPORTS" in the heading thereof.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to bonds issued after the date of enactment of this Act.

6181. RULES RELATING TO REBATE ON EARNINGS ON BONA FIDE DEBT SERVICE FUND.

(a) **NO REBATE WHERE EARNINGS DO NOT EXCEED \$100,000.**—Clause (ii) of section 148(f)(4)(A) of the 1986 Code is amended by striking “unless the issuer otherwise elects,”.

(b) **\$100,000 LIMIT NOT TO APPLY TO CERTAIN ISSUES.**—Subparagraph (A) of section 148(f)(4) of the 1986 Code is amended by adding at the end thereof the following new sentence:

“In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.”

(c) **EFFECTIVE DATE; SPECIAL RULES.**—

(1) **IN GENERAL.**—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

(2) **ELECTION FOR OUTSTANDING BONDS.**—Any issue of bonds other than private activity bonds outstanding as of the date of the enactment of this Act shall be allowed a 1-time election to apply the amendments made by subsection (b) to amounts deposited after such date in bona fide debt service funds of such bonds.

(3) **DEFINITION OF PRIVATE ACTIVITY BOND.**—For purposes of this section and the last sentence of section 148(f)(4)(A) of the 1986 Code (as added by subsection (b)), the term ‘private activity bond’ shall include any qualified 501(c)(3) bond (as defined under section 145 of the 1986 Code).

6182. BONDS ISSUED BY VOLUNTEER FIRE DEPARTMENTS.

(a) **OVERLAPPING AREAS.**—Paragraph (2) of section 150(e) of the 1986 Code (relating to bonds of certain volunteer fire departments) is amended by adding at the end thereof the following new sentence: “For purposes of subparagraph (A), other firefighting services provided in an area shall be disregarded in determining whether an organization is a qualified volunteer fire department if such other firefighting services are provided by a qualified volunteer fire department (determined with the application of this sentence) and such organization and the provider of such other services have been continuously providing firefighting services to such area since January 1, 1981.”

(b) **ACQUISITION OF LAND PERMITTED.**—Subparagraph (B) of section 150(e)(1) of the 1986 Code is amended by inserting “(including land which is functionally related and subordinate thereto)” after “a house”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

6183. DISREGARD OF POOLED FINANCINGS IN DETERMINATION OF QUALIFICATION FOR SMALL ISSUER EXCEPTION.

(a) **GENERAL.**—Clause (ii) of section 148(f)(4)(C) of the 1986 Code (as amended by title I of this Act) is amended by redesignating clauses (II) and (III) as subclauses (III) and (IV), respectively, and inserting after subclause (I) the following new subclause:

“(II) all bonds issued by a governmental unit on behalf of other governmental units with general

26 USC 148 note.

26 USC 150 note.

taxing powers not subordinate to such unit shall, for purposes of applying such subclause to such unit, be treated as not issued by such unit.”.

26 USC 148 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to bonds issued after December 31, 1988.

Subtitle I—Provisions Relating to Exempt Organizations

26 USC 513 note.

SEC. 6201. CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

Section 1834 of the Reform Act is amended by adding at the end thereof the following new sentence: “The amendment made by this section shall apply to games of chance conducted after October 22, 1986, in taxable years ending after such date”.

SEC. 6202. PURCHASE OF INSURANCE BY COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.

(a) **IN GENERAL.**—Subparagraph (A) of section 501(e)(1) of the 1986 Code is amended by inserting “(including the purchasing of insurance on a group basis)” after “purchasing”.

26 USC 501 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to purchases before, on, or after the date of the enactment of this Act.

26 USC 501 note.

SEC. 6203. CANCELLATION OF CERTAIN DEBTS ORIGINATED BY OR GUARANTEED BY THE UNITED STATES NOT TAKEN INTO ACCOUNT IN DETERMINING TAX EXEMPT STATUS OF CERTAIN ORGANIZATIONS.

Subparagraph (A) of section 501(c)(12) of the 1986 Code shall be applied without taking into account any income attributable to the cancellation of any loan originally made or guaranteed by the United States (or any agency or instrumentality thereof) if such cancellation occurs after 1986 and before 1990.

26 USC 4940 note.

SEC. 6204. DETERMINATION OF OPERATING FOUNDATION STATUS FOR CERTAIN PURPOSES.

For purposes of section 302(c)(3) of the Deficit Reduction Act of 1984, a private foundation which constituted an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1986) for its last taxable year ending before January 1, 1983, shall be treated as constituting an operating foundation as of January 1, 1983.

Subtitle J—Taxpayer Rights and Procedures

Omnibus
Taxpayer
Bill of Rights.
26 USC 1 note.

SEC. 6226. SHORT TITLE.

This subtitle may be cited as the “Omnibus Taxpayer Bill of Rights”.

PART I—TAXPAYER RIGHTS**SEC. 6227. DISCLOSURE OF RIGHTS OF TAXPAYERS.**26 USC 7801
note.

(a) **IN GENERAL.**—The Secretary of the Treasury shall, as soon as practicable, but not later than 180 days after the date of the enactment of this Act, prepare a statement which sets forth in simple and nontechnical terms—

(1) the rights of a taxpayer and the obligations of the Internal Revenue Service (hereinafter in this section referred to as the “Service”) during an audit;

(2) the procedures by which a taxpayer may appeal any adverse decision of the Service (including administrative and judicial appeals);

(3) the procedures for prosecuting refund claims and filing of taxpayer complaints; and

(4) the procedures which the Service may use in enforcing the internal revenue laws (including assessment, jeopardy assessment, levy and distraint, and enforcement of liens).

(b) **TRANSMISSION TO COMMITTEES OF CONGRESS.**—The Secretary of the Treasury shall transmit drafts of the statement required under subsection (a) (or proposed revisions of any such statement) to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Taxation on the same day.

(c) **DISTRIBUTION.**—The statement prepared in accordance with subsections (a) and (b) shall be distributed by the Secretary of the Treasury to all taxpayers the Secretary contacts with respect to the determination or collection of any tax (other than by providing tax forms). The Secretary shall take such actions as the Secretary deems necessary to ensure that such distribution does not result in multiple statements being sent to any one taxpayer.

SEC. 6228. PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

(a) **IN GENERAL.**—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

“SEC. 7520. PROCEDURES INVOLVING TAXPAYER INTERVIEWS.

“(a) RECORDING OF INTERVIEWS.—

“(1) RECORDING BY TAXPAYER.—Any officer or employee of the Internal Revenue Service in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer’s own expense and with the taxpayer’s own equipment.

“(2) RECORDING BY IRS OFFICER OR EMPLOYEE.—An officer or employee of the Internal Revenue Service may record any interview described in paragraph (1) if such officer or employee—

“(A) informs the taxpayer of such recording prior to the interview, and

“(B) upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

“(b) SAFEGUARDS.—

“(1) EXPLANATIONS OF PROCESSES.—An officer or employee of the Internal Revenue Service shall before or at an initial interview provide to the taxpayer—

“(A) in the case of an in-person interview with the taxpayer relating to the determination of any tax, an explanation of the audit process and the taxpayer’s rights under such process, or

“(B) in the case of an in-person interview with the taxpayer relating to the collection of any tax, an explanation of the collection process and the taxpayer’s rights under such process.

“(2) RIGHT OF CONSULTATION.—If the taxpayer clearly states to an officer or employee of the Internal Revenue Service at any time during any interview (other than an interview initiated by an administrative summons issued under subchapter A of chapter 78) that the taxpayer wishes to consult with an attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service, such officer or employee shall suspend such interview regardless of whether the taxpayer may have answered one or more questions.

“(c) REPRESENTATIVES HOLDING POWER OF ATTORNEY.—Any attorney, certified public accountant, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer may be authorized by such taxpayer to represent the taxpayer in any interview described in subsection (a). An officer or employee of the Internal Revenue Service may not require a taxpayer to accompany the representative in the absence of an administrative summons issued to the taxpayer under subchapter A of chapter 78. Such an officer or employee, with the consent of the immediate supervisor of such officer or employee, may notify the taxpayer directly that such officer or employee believes such representative is responsible for unreasonable delay or hindrance of an Internal Revenue Service examination or investigation of the taxpayer.

“(d) SECTION NOT TO APPLY TO CERTAIN INVESTIGATIONS.—This section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the Internal Revenue Service.”

(b) REGULATIONS WITH RESPECT TO TIME AND PLACE OF EXAMINATION.—The Secretary of the Treasury or the Secretary’s delegate shall issue regulations to implement subsection (a) of section 7605 of the 1986 Code (relating to time and place of examination) within 1 year after the date of the enactment of this Act.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code is amended by adding at the end thereof the following new item:

“Sec. 7520. Procedures involving taxpayer interviews.”

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall apply to interviews conducted on or after the date which is 90 days after the date of the enactment of this Act.

26 USC 7605
note.

26 USC 7520
note.

SEC. 6229. TAXPAYERS MAY RELY ON WRITTEN ADVICE OF INTERNAL REVENUE SERVICE.

(a) **IN GENERAL.**—Section 6404 of the 1986 Code (relating to abate-ments) is amended by adding at the end thereof the following new subsection:

“(f) **ABATEMENT OF ANY PENALTY OR ADDITION TO TAX ATTRIBUTABLE TO ERRONEOUS WRITTEN ADVICE BY THE INTERNAL REVENUE SERVICE.**—

“(1) **IN GENERAL.**—The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer’s or employee’s official capacity.

“(2) **LIMITATIONS.**—Paragraph (1) shall apply only if—

“(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

“(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

“(3) **INITIAL REGULATIONS.**—Within 180 days after the date of the enactment of this subsection, the Secretary shall prescribe such initial regulations as may be necessary to carry out this subsection.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to advice requested on or after January 1, 1989.

26 USC 6404
note.

SEC. 6230. TAXPAYER ASSISTANCE ORDERS.

(a) **IN GENERAL.**—Subchapter A of chapter 80 of the 1986 Code (relating to general rules for application of the internal revenue laws) is amended by adding at the end thereof the following new section:

“SEC. 7811. TAXPAYER ASSISTANCE ORDERS.

“(a) **AUTHORITY TO ISSUE.**—Upon application filed by a taxpayer with the Office of Ombudsman (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the Ombudsman may issue a Taxpayer Assistance Order if, in the determination of the Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.

Regulations.

“(b) **TERMS OF A TAXPAYER ASSISTANCE ORDER.**—The terms of a Taxpayer Assistance Order may require the Secretary—

“(1) to release property of the taxpayer levied upon, or

“(2) to cease any action, or refrain from taking any action, with respect to the taxpayer under—

“(A) chapter 64 (relating to collection),

“(B) subchapter B of chapter 70 (relating to bankruptcy and receiverships),

“(C) chapter 78 (relating to discovery of liability and enforcement of title), or

“(D) any other provision of law which is specifically described by the Ombudsman in such order.

“(c) **AUTHORITY TO MODIFY OR RESCIND.**—Any Taxpayer Assistance Order issued by the Ombudsman under this section may be modified or rescinded only by the Ombudsman, a district director, a

service center director, a compliance center director, a regional director of appeals, or any superior of any such person.

“(d) **SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.**—The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for—

“(1) the period beginning on the date of the taxpayer’s application under subsection (a) and ending on the date of the Ombudsman’s decision with respect to such application, and

“(2) any period specified by the Ombudsman in a Taxpayer Assistance Order issued pursuant to such application.

“(e) **INDEPENDENT ACTION OF OMBUDSMAN.**—Nothing in this section shall prevent the Ombudsman from taking any action in the absence of an application under subsection (a).

“(f) **OMBUDSMAN.**—For purposes of this section, the term ‘Ombudsman’ includes any designee of the Ombudsman.”

(b) **CLERICAL AMENDMENT.**—The table of sections for subchapter A of chapter 80 of the 1986 Code is amended by adding at the end thereof the following new item:

“Sec. 7811. Taxpayer Assistance Orders.”

(c) **ISSUANCE OF REGULATIONS.**—The Secretary of the Treasury or the Secretary’s delegate shall issue such regulations as the Secretary deems necessary within 90 days of the date of the enactment of this Act in order to carry out the purposes of section 7811 of the 1986 Code (as added by this section) and to ensure taxpayers uniform access to administrative procedures.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 1989.

SEC. 6231. BASIS FOR EVALUATION OF INTERNAL REVENUE SERVICE EMPLOYEES.

(a) **IN GENERAL.**—The Internal Revenue Service shall not use records of tax enforcement results—

(1) to evaluate employees directly involved in collection activities and their immediate supervisors, or

(2) to impose or suggest production quotas or goals with respect to individuals described in clause (i).

(b) **APPLICATION OF IRS POLICY STATEMENT.**—The Internal Revenue Service shall not be treated as failing to meet the requirements of subsection (a) if the Service follows the policy statement of the Service regarding employee evaluation (as in effect on the date of the enactment of this Act) in a manner which does not violate subsection (a).

(c) **CERTIFICATION.**—Each district director shall certify quarterly by letter to the Commissioner of Internal Revenue that tax enforcement results are not used in a manner prohibited by subsection (a).

(d) **EFFECTIVE DATE.**—The provisions of this section shall apply to evaluations conducted on or after January 1, 1989.

SEC. 6232. PROCEDURES RELATING TO INTERNAL REVENUE SERVICE REGULATIONS.

(a) **IN GENERAL.**—Section 7805 of the 1986 Code (relating to rules and regulations) is amended by adding at the end thereof the following new subsections:

“(e) **TEMPORARY REGULATIONS.**—

“(1) **ISSUANCE.**—Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

26 USC 7811
note.

26 USC 7811
note.

26 USC 7803
note.

“(2) 3-YEAR DURATION.—Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

“(f) IMPACT OF REGULATIONS ON SMALL BUSINESS REVIEWED.—After the publication of any proposed regulation by the Secretary and before the promulgation of any final regulation by the Secretary which does not supersede a proposed regulation, the Secretary shall submit such regulation to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business. The Administrator shall have 4 weeks from the date of submission to respond.”

“(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any regulation issued after the date which is 10 days after the date of the enactment of this Act.

26 USC 7805
note.

SEC. 6233. CONTENT OF TAX DUE, DEFICIENCY, AND OTHER NOTICES.

“(a) IN GENERAL.—Chapter 77 of the 1986 Code (relating to miscellaneous provisions) is further amended by adding at the end thereof the following new section:

SEC. 7521. CONTENT OF TAX DUE, DEFICIENCY, AND OTHER NOTICES.

“(a) GENERAL RULE.—Any notice to which this section applies shall describe the basis for, and identify the amounts (if any) of, the tax due, interest, additional amounts, additions to the tax, and assessable penalties included in such notice. An inadequate description under the preceding sentence shall not invalidate such notice.

“(b) NOTICES TO WHICH SECTION APPLIES.—This section shall apply

“(1) any tax due notice or deficiency notice described in section 6155, 6212, or 6303,

“(2) any notice generated out of any information return matching program, and

“(3) the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.”

“(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 of the 1986 Code is further amended by adding at the end thereof the following new item:

“Sec. 7521. Content of tax due, deficiency, and other notices.”

“(c) EFFECTIVE DATE.—The amendments made by this section shall apply to mailings made on or after January 1, 1990.

26 USC 7521
note.

“(d) REPORT.—Not later than July 1, 1989, the Secretary of the Treasury or his delegate shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the steps taken to carry out the amendments made by this section.

SEC. 6234. INSTALLMENT PAYMENT OF TAX LIABILITY.

“(a) IN GENERAL.—Subchapter A of chapter 62 of the 1986 Code (relating to place and due date for payment of tax) is amended by adding at the end thereof the following new section:

SEC. 6159. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN INSTALLMENTS.

“(a) AUTHORIZATION OF AGREEMENTS.—The Secretary is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of

any tax in installment payments if the Secretary determines that such agreement will facilitate collection of such liability.

"(b) EXTENT TO WHICH AGREEMENTS REMAIN IN EFFECT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any agreement entered into by the Secretary under subsection (a) shall remain in effect for the term of the agreement.

"(2) INADEQUATE INFORMATION OR JEOPARDY.—The Secretary may terminate any agreement entered into by the Secretary under subsection (a) if—

"(A) information which the taxpayer provided to the Secretary prior to the date such agreement was entered into was inaccurate or incomplete, or

"(B) the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.

"(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—

"(A) IN GENERAL.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

"(B) NOTICE.—Action may be taken by the Secretary under subparagraph (A) only if—

"(i) notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

"(ii) such notice includes the reasons why the Secretary believes a significant change in the financial condition of the taxpayer has occurred.

"(4) FAILURE TO PAY AN INSTALLMENT OR ANY OTHER TAX LIABILITY WHEN DUE OR TO PROVIDE REQUESTED FINANCIAL INFORMATION.—The Secretary may alter, modify, or terminate an agreement entered into by the Secretary under subsection (a) in the case of the failure of the taxpayer—

"(A) to pay any installment at the time such installment payment is due under such agreement,

"(B) to pay any other tax liability at the time such liability is due, or

"(C) to provide a financial condition update as requested by the Secretary."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6601(b) of the 1986 Code (relating to last day prescribed for payment) is amended by inserting "or any installment agreement entered into under section 6159" after "time for payment".

(2) The table of sections for subchapter A of chapter 62 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 6159. Agreements for payment of tax liability in installments."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 6235. ASSISTANT COMMISSIONER FOR TAXPAYER SERVICES.

(a) **IN GENERAL.**—Section 7802 of the 1986 Code (relating to Commissioner of Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)) is amended by adding at the end thereof the following new subsection:

“(c) **ASSISTANT COMMISSIONER (TAXPAYER SERVICES).**—There is established within the Internal Revenue Service an office to be known as the ‘Office for Taxpayer Services’ to be under the supervision and direction of an Assistant Commissioner of the Internal Revenue. The Assistant Commissioner shall be responsible for taxpayer services such as telephone, walk-in, and taxpayer educational services, and the design and production of tax and informational forms.”

Establishment.

(b) **ANNUAL REPORTS TO CONGRESS.**—The Assistant Commissioner (Taxpayer Services) and the Taxpayer Ombudsman for the Internal Revenue Service shall jointly make an annual report regarding the quality of taxpayer services provided. Such report shall be made to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

26 USC 7802
note.

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date 180 days after the date of the enactment of this Act.

26 USC 7802
note.**PART II—LEVY AND LIEN PROVISIONS****SEC. 6236. LEVY AND DISTRAINT.**

(a) **NOTICE.**—Section 6331(d) of the 1986 Code (relating to levy and distraint) is amended—

(1) by striking out “10 days” in paragraph (2) and inserting in lieu thereof “30 days”,

(2) by striking out “10-DAY REQUIREMENT” in the heading of paragraph (2) and inserting in lieu thereof “30-DAY REQUIREMENT”, and

(3) by adding at the end thereof the following new paragraph:

“(4) **INFORMATION INCLUDED WITH NOTICE.**—The notice required under paragraph (1) shall include a brief statement which sets forth in simple and nontechnical terms—

“(A) the provisions of this title relating to levy and sale of property,

“(B) the procedures applicable to the levy and sale of property under this title,

“(C) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals,

“(D) the alternatives available to taxpayers which could prevent levy on the property (including installment agreements under section 6159),

“(E) the provisions of this title relating to redemption of property and release of liens on property, and

“(F) the procedures applicable to the redemption of property and the release of a lien on property under this title.”

(b) **EFFECT OF LEVY ON SALARY AND WAGES.**—

(1) **IN GENERAL.**—Subsection (e) of section 6331 of the 1986 Code (relating to levy and distraint) is amended to read as follows:

“(e) CONTINUING LEVY ON SALARY AND WAGES.—The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until such levy is released under section 6343.”

(2) CROSS REFERENCE.—Section 6331(f) of the 1986 Code (relating to cross references) is amended by adding at the end thereof the following new paragraph:

“(3) For release and notice of release of levy, see section 6343.”

(c) INCREASE IN AMOUNTS OF CERTAIN PROPERTY EXEMPT FROM LEVY.—

(1) FUEL, PROVISIONS, FURNITURE, PERSONAL EFFECTS.—Paragraph (2) of section 6334(a) of the 1986 Code (relating to property exempt from levy) is amended by striking out “\$1,500” and inserting in lieu thereof “\$1,650 (\$1,550 in the case of levies issued during 1989)”.

(2) BOOKS AND TOOLS.—Paragraph (3) of section 6334(a) of the 1986 Code is amended by striking out “\$1,000” and inserting in lieu thereof “\$1,100 (\$1,050 in the case of levies issued during 1989)”.

(3) WAGES, SALARY, AND OTHER INCOME.—

(A) INCREASE IN AMOUNT EXEMPT.—Paragraph (1) of section 6334(d) of the 1986 Code (relating to exempt amount of wages, salary, or other income) is amended to read as follows:

“(1) INDIVIDUALS ON WEEKLY BASIS.—In the case of an individual who is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt from levy under subsection (a)(9) shall be the exempt amount.”

(B) EXEMPT AMOUNT DEFINED.—Subsection (d) of section 6334 of the 1986 Code (relating to property exempt from levy) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

“(2) EXEMPT AMOUNT.—For purposes of paragraph (1), the term ‘exempt amount’ means an amount equal to—

“(A) the sum of—

“(i) the standard deduction, and

“(ii) the aggregate amount of the deductions for personal exemptions allowed the taxpayer under section 151 in the taxable year in which such levy occurs, divided by

“(B) 52.

Unless the taxpayer submits to the Secretary a written and properly verified statement specifying the facts necessary to determine the proper amount under subparagraph (A), subparagraph (A) shall be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption.”

(4) ADDITIONAL PROPERTY EXEMPT FROM LEVY.—

(A) IN GENERAL.—Subsection (a) of section 6334 of the 1986 Code (relating to property exempt from levy) is amended by adding at the end thereof the following new paragraphs:

“(11) CERTAIN PUBLIC ASSISTANCE PAYMENTS.—Any amount payable to an individual as a recipient of public assistance under—

“(A) title IV (relating to aid to families with dependent children) or title XVI (relating to supplemental security income for the aged, blind, and disabled) of the Social Security Act, or

“(B) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test.

“(12) ASSISTANCE UNDER JOB TRAINING PARTNERSHIP ACT.—Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.

“(13) PRINCIPAL RESIDENCE EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY.—Except to the extent provided in subsection (e), the principal residence of the taxpayer (within the meaning of section 1034).”

(B) LEVY PERMITTED ON PRINCIPAL RESIDENCE IN CASE OF JEOPARDY OR APPROVAL BY CERTAIN OFFICIALS.—Section 6334 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(e) LEVY ALLOWED ON PRINCIPAL RESIDENCE IN CASE OF JEOPARDY OR CERTAIN APPROVAL.—Property described in subsection (a)(13) shall not be exempt from levy if—

“(1) a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property, or

“(2) the Secretary finds that the collection of tax is in jeopardy.”

(d) UNECONOMICAL LEVY; LEVY ON APPEARANCE DATE OF SUMMONS.—Section 6331 of the 1986 Code (relating to levy and distraint) is amended by redesignating subsection (f) as subsection (h) and by inserting after subsection (e) the following new subsections:

“(f) UNECONOMICAL LEVY.—No levy may be made on any property if the amount of the expenses which the Secretary estimates (at the time of levy) would be incurred by the Secretary with respect to the levy and sale of such property exceeds the fair market value of such property at the time of levy.

“(g) LEVY ON APPEARANCE DATE OF SUMMONS.—

“(1) IN GENERAL.—No levy may be made on the property of any person on any day on which such person (or officer or employee of such person) is required to appear in response to a summons issued by the Secretary for the purpose of collecting any underpayment of tax.

“(2) NO APPLICATION IN CASE OF JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of tax is in jeopardy.”

(e) SURRENDER OF BANK ACCOUNTS SUBJECT TO LEVY ONLY AFTER 21 DAYS.—

(1) IN GENERAL.—Section 6332 of the 1986 Code (relating to surrender of property subject to levy), as amended by title I of this Act is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

“(c) SPECIAL RULE FOR BANKS.—Any bank (as defined in section 408(n)) shall surrender (subject to an attachment or execution under

judicial process) any deposits (including interest thereon) in such bank only after 21 days after service of levy.”

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 6332 of the 1986 Code is amended by striking out “subsection (b)” and inserting in lieu thereof “subsections (b) and (c)”.

(B) Subsection (e) of section 6332 of the 1986 Code, as redesignated by paragraph (1), is amended by striking out “subsection (c)(1)” and inserting in lieu thereof “subsection (d)(1)”.

(f) RELEASE OF LEVY.—Subsection (a) of section 6343 of the 1986 Code (relating to release of levy) is amended to read as follows:

“(a) **RELEASE OF LEVY AND NOTICE OF RELEASE.**—

“(1) **IN GENERAL.**—Under regulations prescribed by the Secretary, the Secretary shall release the levy upon all, or part of, the property or rights to property levied upon and shall promptly notify the person upon whom such levy was made (if any) that such levy has been released if—

“(A) the liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

“(B) release of such levy will facilitate the collection of such liability,

“(C) the taxpayer has entered into an agreement under section 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise,

“(D) the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

“(E) the fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

For purposes of subparagraph (C), the Secretary is not required to release such levy if such release would jeopardize the secured creditor status of the Secretary.

(2) EXPEDITED DETERMINATION ON CERTAIN BUSINESS PROPERTY.—In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the Secretary shall provide for an expedited determination under paragraph (1) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) SUBSEQUENT LEVY.—The release of levy on any property under paragraph (1) shall not prevent any subsequent levy on such property.”

(g) RIGHT OF TAXPAYER TO REQUEST THAT SEIZED PROPERTY BE SOLD WITHIN 60 DAYS.—Section 6335 of the 1986 Code (relating to sale of seized property) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **RIGHT TO REQUEST SALE OF SEIZED PROPERTY WITHIN 60 DAYS.**—The owner of any property seized by levy may request that the Secretary sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The Secretary shall comply with such request unless the Secretary determines (and notifies the owner within such period) that such compliance would not be in the best interests of the United States.”

(h) EFFECTIVE DATE.—

(1) **IN GENERAL.**—The amendments made by this section (other than subsection (g)) shall apply to levies issued on or after July 1, 1989.

(2) **SUBSECTION (g).**—The amendment made by subsection (g) shall apply to requests made on or after January 1, 1989.

SEC. 6237. REVIEW OF JEOPARDY LEVY AND ASSESSMENT PROCEDURES.

(a) **IN GENERAL.**—Subsection (a)(1) of section 7429 of the 1986 Code (relating to review of jeopardy assessment procedures) is amended—

(1) by inserting “or levy is made under section 6331(a) less than 30 days after notice and demand for payment is made under section 6331(a),” after “6862,” and

(2) by inserting “or levy” after “such assessment”.

(b) **ADMINISTRATIVE DETERMINATIONS.**—Paragraph (3) of section 7429(a) of the 1986 Code (relating to redetermination by the Secretary) is amended to read as follows:

“(3) **REDETERMINATION BY SECRETARY.**—After a request for review is made under paragraph (2), the Secretary shall determine—

“(A) whether or not—

“(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

“(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

“(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.”

(c) **TAX COURT REVIEW JURISDICTION.**—Subsection (b) of section 7429 of the 1986 Code is amended to read as follows:

“(b) **JUDICIAL REVIEW.**—

“(1) **PROCEEDINGS PERMITTED.**—Within 90 days after the earlier of—

“(A) the day the Secretary notifies the taxpayer of the Secretary’s determination described in subsection (a)(3), or

“(B) the 16th day after the request described in subsection (a)(2) was made,

the taxpayer may bring a civil action against the United States for a determination under this subsection in the court with jurisdiction determined under paragraph (2).

“(2) **JURISDICTION FOR DETERMINATION.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), the district courts of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection.

“(B) **TAX COURT.**—If a petition for a redetermination of a deficiency under section 6213(a) has been timely filed with the Tax Court before the making of an assessment or levy that is subject to the review procedures of this section, and 1 or more of the taxes and taxable periods before the Tax Court because of such petition is also included in the written statement that is provided to the taxpayer under subsection (a), then the Tax Court also shall have jurisdiction over any civil action for a determination under this subsection with respect to all the taxes and taxable periods included in such written statement.

“(3) DETERMINATION BY COURT.—Within 20 days after a proceeding is commenced under paragraph (1), the court shall determine—

“(A) whether or not—

“(i) the making of the assessment under section 6851, 6861, or 6862, as the case may be, is reasonable under the circumstances, and

“(ii) the amount so assessed or demanded as a result of the action taken under section 6851, 6861, or 6862 is appropriate under the circumstances, or

“(B) whether or not the levy described in subsection (a)(1) is reasonable under the circumstances.

If the court determines that proper service was not made on the United States or on the Secretary, as may be appropriate, within 5 days after the date of the commencement of the proceeding, then the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States or on the Secretary, as may be appropriate.

“(4) ORDER OF COURT.—If the court determines that the making of such levy is unreasonable, that the making of such assessment is unreasonable, or that the amount assessed or demanded is inappropriate, then the court may order the Secretary to release such levy, to abate such assessment, to redetermine (in whole or in part) the amount assessed or demanded, or to take such other action as the court finds appropriate.”

(d) VENUE.—Section 7429(e) of the 1986 Code (relating to venue) is amended to read as follows:

“(e) VENUE.—

“(1) DISTRICT COURT.—A civil action in a district court under subsection (b) shall be commenced only in the judicial district described in section 1402(a) (1) or (2) of title 28, United States Code.

“(2) TRANSFER OF ACTIONS.—If a civil action is filed under subsection (b) with the Tax Court and such court finds that there is want of jurisdiction because of the jurisdiction provisions of subsection (b)(2), then the Tax Court shall, if such court determines it is in the interest of justice, transfer the civil action to the district court in which the action could have been brought at the time such action was filed. Any civil action so transferred shall proceed as if such action had been filed in the district court to which such action is transferred on the date on which such action was actually filed in the Tax Court from which such action is transferred.”

(e) CONFORMING AMENDMENTS.—

(1) Section 7429(c) of the 1986 Code (relating to extension of 20-day period where taxpayer so requests) and section 7429(f) (relating to finality of determination) are amended by striking out “district” each place it appears.

(2) Section 7429(g) of the 1986 Code (relating to burden of proof) is amended—

(A) by inserting “the making of a levy described in subsection (a)(1) or” after “whether” in paragraph (1),

(B) by striking out “TERMINATION” in the heading of paragraph (1) and inserting in lieu thereof “LEVY, TERMINATION,” and

(C) by striking out “an action” and inserting in lieu thereof “a proceeding” in paragraphs (1) and (2).

(3) The heading of section 7429 of the 1986 Code is amended by inserting “LEVY OR” after “JEOPARDY”.

(4) The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by inserting “levy or” after “jeopardy” in the item relating to section 7429.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall apply to jeopardy levies issued and assessments made on or after July 1, 1989. 26 USC 7429
note.

SEC. 6238. ADMINISTRATIVE APPEAL OF LIENS.

(a) **ESTABLISHMENT OF ADMINISTRATIVE APPEAL FOR DISPUTED LIENS.**—Subchapter C of chapter 64 of the 1986 Code (relating to lien for taxes) is amended by redesignating section 6326 as section 6327 and inserting after section 6325 the following new section:

“SEC. 6326. ADMINISTRATIVE APPEAL OF LIENS.

“(a) **IN GENERAL.**—In such form and at such time as the Secretary shall prescribe by regulations, any person shall be allowed to appeal to the Secretary after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien. Regulations.

“(b) **CERTIFICATE OF RELEASE.**—If the Secretary determines that the filing of the notice of any lien was erroneous, the Secretary shall expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.”

(b) **REGULATIONS.**—The Secretary of the Treasury or the Secretary's delegate shall prescribe the regulations necessary to implement the administrative appeal provided for in the amendment made by subsection (a) within 180 days after the date of the enactment of this Act. 26 USC 6326
note.

(c) **CLERICAL AMENDMENT.**—The table of sections for subchapter C of chapter 64 of the 1986 Code is amended by striking out the item relating to section 6326 and inserting in lieu thereof the following:

“Sec. 6326. Administrative appeal of liens.

“Sec. 6327. Cross references.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date which is 60 days after the date regulations are issued under subsection (b). 26 USC 6326
note.

PART III—PROCEEDINGS BY TAXPAYERS

SEC. 6239. AWARDING OF COSTS AND CERTAIN FEES IN ADMINISTRATIVE AND COURT PROCEEDINGS.

(a) **IN GENERAL.**—Section 7430 of the 1986 Code is amended to read as follows:

“SEC. 7430. AWARDING OF COSTS AND CERTAIN FEES.

“(a) **IN GENERAL.**—In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for—

“(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and

“(2) reasonable litigation costs incurred in connection with such court proceeding.

“(b) LIMITATIONS.—

“(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service.

“(2) ONLY COSTS ALLOCABLE TO THE UNITED STATES.—An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

“(3) EXCLUSION OF DECLARATORY JUDGMENT PROCEEDINGS.—

“(A) IN GENERAL.—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

“(B) EXCEPTION FOR SECTION 501(C)(3) DETERMINATION REVOCATION PROCEEDINGS.—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3).

“(4) COSTS DENIED WHERE PARTY PREVAILING PROTRACTS PROCEEDINGS.—No award for reasonable litigation and administrative costs may be made under subsection (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

“(c) DEFINITIONS.—For purposes of this section—

“(1) REASONABLE LITIGATION COSTS.—The term ‘reasonable litigation costs’ includes—

“(A) reasonable court costs, and

“(B) based upon prevailing market rates for the kind or quality of services furnished—

“(i) the reasonable expenses of expert witnesses in connection with a court proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States,

“(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and

“(iii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of \$75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate.

“(2) REASONABLE ADMINISTRATIVE COSTS.—The term ‘reasonable administrative costs’ means—

“(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

“(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(B) of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency.

“(3) **ATTORNEY’S FEES.**—For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

“(4) **PREVAILING PARTY.**—

“(A) **IN GENERAL.**—The term ‘prevailing party’ means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)—

“(i) which establishes that the position of the United States in the proceeding was not substantially justified,

“(ii) which—

“(I) has substantially prevailed with respect to the amount in controversy, or

“(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

“(iii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) except to the extent differing procedures are established by rule of court and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).

“(B) **DETERMINATION AS TO PREVAILING PARTY.**—Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made by agreement of the parties or—

“(i) in the case where the final determination with respect to the tax, interest, or penalty is made at the administrative level, by the Internal Revenue Service, or

“(ii) in the case where such final determination is made by a court, the court.

“(5) **ADMINISTRATIVE PROCEEDINGS.**—The term ‘administrative proceeding’ means any procedure or other action before the Internal Revenue Service.

“(6) **COURT PROCEEDINGS.**—The term ‘court proceeding’ means any civil action brought in a court of the United States (including the Tax Court and the United States Claims Court).

“(7) **POSITION OF UNITED STATES.**—The term ‘position of the United States’ means—

“(A) the position taken by the United States in a judicial proceeding to which subsection (a) applies, and

“(B) the position taken in an administrative proceeding to which subsection (a) applies as of the earlier of—

“(i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or

“(ii) the date of the notice of deficiency.

“(d) SPECIAL RULES FOR PAYMENT OF COSTS.—

“(1) REASONABLE ADMINISTRATIVE COSTS.—An award for reasonable administrative costs shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

“(2) REASONABLE LITIGATION COSTS.—An award for reasonable litigation costs shall be payable in the case of the Tax Court in the same manner as such an award by a district court.

“(e) MULTIPLE ACTIONS.—For purposes of this section, in the case of—

“(1) multiple actions which could have been joined or consolidated, or

“(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single court proceeding in the same court,

such actions or cases shall be treated as 1 court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

“(f) RIGHT OF APPEAL.—

“(1) COURT PROCEEDINGS.—An order granting or denying (in whole or in part) an award for reasonable litigation or administrative costs under subsection (a) in a court proceeding, may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment.

“(2) ADMINISTRATIVE PROCEEDINGS.—A decision granting or denying (in whole or in part) an award for reasonable administrative costs under subsection (a) by the Internal Revenue Service shall be subject to appeal to the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute).”

(b) CONFORMING AMENDMENT.—Section 504 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

“(f) No award may be made under this section for costs, fees, or other expenses which may be awarded under section 7430 of the Internal Revenue Code of 1986.”

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out “court” in the item relating to section 7430.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to proceedings commencing after the date of the enactment of this Act.

SEC. 6240. CIVIL CAUSE OF ACTION FOR DAMAGES SUSTAINED DUE TO FAILURE TO RELEASE LIEN.

(a) IN GENERAL.—Subchapter B of chapter 76 of the 1986 Code (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7432 as section 7433 and by inserting after section 7431 the following new section:

"SEC. 7432. CIVIL DAMAGES FOR FAILURE TO RELEASE LIEN.

"(a) **IN GENERAL.**—If any officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien under section 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

"(b) **DAMAGES.**—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

"(1) actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus

"(2) the costs of the action.

"(c) **PAYMENT AUTHORITY.**—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(d) **LIMITATIONS.**—

"(1) **REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.**—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

"(2) **MITIGATION OF DAMAGES.**—The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

"(3) **PERIOD FOR BRINGING ACTION.**—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

"(e) **NOTICE OF FAILURE TO RELEASE LIEN.**—The Secretary shall by regulation prescribe reasonable procedures for a taxpayer to notify the Secretary of the failure to release a lien under section 6325 on property of the taxpayer."

Regulations.

"(b) **CLERICAL AMENDMENT.**—The table of sections for subchapter B of chapter 76 of the 1986 Code is amended by striking out the item relating to section 7432 and inserting in lieu thereof the following new items:

"Sec. 7432. Civil damages for failure to release lien.

"Sec. 7433. Cross references."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to notices provided by the taxpayer of the failure to release a lien, and damages arising, after December 31, 1988.

26 USC 7432
note.

SEC. 6241. CIVIL CAUSE OF ACTION FOR DAMAGES SUSTAINED DUE TO CERTAIN UNAUTHORIZED ACTIONS BY INTERNAL REVENUE SERVICE.

(a) **IN GENERAL.**—Subchapter B of chapter 76 of the 1986 Code (relating to proceedings by taxpayers and third parties) is further amended by redesignating section 7433 as section 7434 and by inserting after section 7432 the following new section:

"SEC. 7433. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS.

"(a) IN GENERAL.—If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$100,000 or the sum of—

"(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee, and

"(2) the costs of the action.

"(c) PAYMENT AUTHORITY.—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(d) LIMITATIONS.—

"(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

"(2) MITIGATION OF DAMAGES.—The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

"(3) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues."

(b) DAMAGES FOR FRIVOLOUS OR GROUNDLESS CLAIMS.—

(1) IN GENERAL.—Section 6673 of the 1986 Code (relating to damages assessable for instituting proceedings before the Tax Court primarily for delay, etc.) is amended by inserting "(a) IN GENERAL.—" before "Whenever" and by adding at the end thereof the following new subsection:

"(b) CLAIMS UNDER SECTION 7433.—Whenever it appears to the court that the taxpayer's position in proceedings before the court instituted or maintained by such taxpayer under section 7433 is frivolous or groundless, damages in an amount not in excess of \$10,000 shall be awarded to the United States by the court in the court's decision. Damages so awarded shall be assessed at the same time as the decision and shall be paid upon notice and demand from the Secretary."

(2) CLERICAL AMENDMENT.—The heading for section 6673 of the 1986 Code is amended by striking out "TAX".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 of the 1986 Code is further amended by striking out the item relating to section 7433 and inserting in lieu thereof the following new items:

"Sec. 7433. Civil damages for certain unauthorized collection actions.

"Sec. 7434. Cross references."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

26 USC 6673
note.

SEC. 6242. ASSESSABLE PENALTY FOR IMPROPER DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

(a) **IN GENERAL.**—Part I of subchapter B of chapter 68 of the 1986 Code (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6712. DISCLOSURE OR USE OF INFORMATION BY PREPARERS OF RETURNS.

"(a) **IMPOSITION OF PENALTY.**—If any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who—

"(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

"(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return, shall pay a penalty of \$250 for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed \$10,000.

"(b) **EXCEPTIONS.**—The rules of section 7216(b) shall apply for purposes of this section.

"(c) **DEFICIENCY PROCEDURES NOT TO APPLY.**—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section."

(b) **CRIMINAL PENALTY TO APPLY ONLY WHERE KNOWING OR RECKLESS DISCLOSURE OR USE.**—The material preceding paragraph (1) of section 7216(a) of the 1986 Code is amended by striking out "and who—" and inserting in lieu thereof "and who knowingly or recklessly—".

(c) **CLERICAL AMENDMENT.**—The table of sections for part I of subchapter B of chapter 68 of the 1986 Code is amended by adding at the end thereof the following new item:

"Sec. 6712. Disclosure or use of information by preparers of returns."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to disclosures or uses after December 31, 1988.

26 USC 6712
note.

PART IV—TAX COURT JURISDICTION

SEC. 6243. JURISDICTION TO RESTRAIN CERTAIN PREMATURE ASSESSMENTS.

(a) **IN GENERAL.**—Section 6213(a) of the 1986 Code (relating to time for filing petition and restriction on assessment) is amended by striking out the period at the end of the last sentence and inserting in lieu thereof ", including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition."

(b) **APPEAL OF ORDER RESTRAINING ASSESSMENT, ETC.**—Section 7482(a) of the 1986 Code (relating to jurisdiction on appeal) is amended by adding at the end thereof the following new paragraph:

“(3) **CERTAIN ORDERS ENTERED UNDER SECTION 6213(a).**—An order of the Tax Court which is entered under authority of section 6213(a) and which resolves a proceeding to restrain assessment or collection shall be treated as a decision of the Tax Court for purposes of this section and shall be subject to the same review by the United States Court of Appeals as a similar order of a district court.”

26 USC 6213
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to orders entered after the date of the enactment of this Act.

SEC. 6244. JURISDICTION TO ENFORCE OVERPAYMENT DETERMINATIONS.

(a) **IN GENERAL.**—Section 6512(b) of the 1986 Code (relating to overpayment determined by the Tax Court) is amended by striking out “paragraph (2)” and inserting in lieu thereof “paragraph (3)” in paragraph (1), by redesignating paragraph (2) as paragraph (3), and by inserting the following new paragraph after paragraph (1):

“(2) **JURISDICTION TO ENFORCE.**—If, after 120 days after a decision of the Tax Court has become final, the Secretary has failed to refund the overpayment determined by the Tax Court, together with the interest thereon as provided in subchapter B of chapter 67, then the Tax Court, upon motion by the taxpayer, shall have jurisdiction to order the refund of such overpayment and interest.”

(b) **AMENDMENTS ADDING CROSS REFERENCES.**—

(1) Section 6214(e) of the 1986 Code is amended by striking out “REFERENCE.—” and inserting in lieu thereof “REFERENCES.—” in the heading, by designating the undesignated paragraph as paragraph (1), and by adding at the end thereof the following new paragraph:

“(2) For provision giving Tax Court jurisdiction to order a refund of an overpayment and to award sanctions, see section 6512(b)(2).”

(2) Section 6512(c) of the 1986 Code is amended by striking out “REFERENCE.—” and inserting in lieu thereof “REFERENCES.—” in the heading, by designating the undesignated paragraph as paragraph (1), and by adding at the end thereof the following new paragraph:

“(2) For provision giving the Tax Court jurisdiction to award reasonable litigation costs in proceedings to enforce an overpayment determined by such court, see section 7430.”

26 USC 6214
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to overpayments determined by the Tax Court which have not yet been refunded by the 90th day after the date of the enactment of this Act.

SEC. 6245. JURISDICTION TO REVIEW CERTAIN SALES OF SEIZED PROPERTY.

(a) **JURISDICTION TO REVIEW CERTAIN SALES OF PROPERTY.**—Section 6863(b)(3) of the 1986 Code (relating to stay of sale of seized property pending Tax Court decision) is amended by adding at the end thereof the following new subparagraph:

“(C) **REVIEW BY TAX COURT.**—If, but for the application of subparagraph (B), a sale would be prohibited by subparagraph (A)(iii), then the Tax Court shall have jurisdiction to review the

Secretary's determination under subparagraph (B) that the property may be sold. Such review may be commenced upon motion by either the Secretary or the taxpayer. An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court."

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act.

26 USC 6863
note.

SEC. 6246. JURISDICTION TO REDETERMINE INTEREST ON DEFICIENCIES.

(a) **IN GENERAL.**—Section 7481 of the 1986 Code (relating to date when Tax Court decision becomes final) is amended by adding at the end thereof the following new subsection:

"(c) **JURISDICTION OVER INTEREST DETERMINATIONS.**—Notwithstanding subsection (a), if—

"(1) an assessment has been made by the Secretary under section 6215 which includes interest as imposed by this title,

"(2) the taxpayer has paid the entire amount of the deficiency plus interest claimed by the Secretary, and

"(3) within 1 year after the date the decision of the Tax Court becomes final under subsection (a), the taxpayer files a petition in the Tax Court for a determination that the amount of interest claimed by the Secretary exceeds the amount of interest imposed by this title,

then the Tax Court may reopen the case solely to determine whether the taxpayer has made an overpayment of such interest and the amount of any such overpayment. If the Tax Court determines under this subsection that the taxpayer has made an overpayment of interest, then that determination shall be treated under section 6512(b)(1) as a determination of an overpayment of tax. An order of the Tax Court redetermining the interest due, when entered upon the records of the court, shall be reviewable in the same manner as a decision of the Tax Court."

(b) **CONFORMING AMENDMENTS.**—

(1) Section 6512(a) of the 1986 Code (relating to effect of petition to Tax Court) is amended by inserting after "section 6213(a)" the following: "(or 7481(c) with respect to a determination of statutory interest)".

(2) Subsection (a) of section 7481 of the 1986 Code is amended by striking out "subsection (b)" and inserting in lieu thereof "subsections (b) and (c)".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to assessments of deficiencies redetermined by the Tax Court made after the date of the enactment of this Act.

26 USC 6512
note.

SEC. 6247. JURISDICTION TO MODIFY DECISIONS IN CERTAIN ESTATE TAX CASES.

(a) **IN GENERAL.**—Section 7481 of the 1986 Code (relating to date when Tax Court decision becomes final), as amended by section 783(a), is further amended by adding at the end thereof the following new subsection:

"(d) **DECISIONS RELATING TO ESTATE TAX EXTENDED UNDER SECTION 6166.**—If with respect to a decedent's estate subject to a decision of the Tax Court—

"(1) the time for payment of an amount of tax imposed by chapter 11 is extended under section 6166, and

“(2) there is treated as an administrative expense under section 2053 either—

“(A) any amount of interest which a decedent’s estate pays on any portion of the tax imposed by section 2001 on such estate for which the time of payment is extended under section 6166, or

“(B) interest on any estate, succession, legacy, or inheritance tax imposed by a State on such estate during the period of the extension of time for payment under section 6166,

then, upon a motion by the petitioner in such case in which such time for payment of tax has been extended under section 6166, the Tax Court may reopen the case solely to modify the Court’s decision to reflect such estate’s entitlement to a deduction for such administration expenses under section 2053 and may hold further trial solely with respect to the claim for such deduction if, within the discretion of the Tax Court, such a hearing is deemed necessary. An order of the Tax Court disposing of a motion under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.”

(b) CONFORMING AMENDMENTS.—

(1) Section 6512(a) of the 1986 Code (relating to effect of petition to Tax Court), as amended by this part, is further amended by striking out “interest” and inserting in lieu thereof “interest or section 7481(d) solely with respect to a determination of estate tax by the Tax Court”).

(2) Subsection (a) of section 7481 of the 1986 Code, as amended by this part, is further amended by striking out “subsections (b) and (c)” and inserting in lieu thereof “subsections (b), (c), and (d)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to Tax Court cases for which the decision is not final on the date of the enactment of this Act.

26 USC 6512
note.

Subtitle K—Other Administrative Provisions

SEC. 6251. EXCHANGE OF INFORMATION.

Clause (i) of section 6103(b)(5)(B) of the 1986 Code (defining State) is amended by striking out “2,000,000” and inserting in lieu thereof “250,000”.

SEC. 6252. PROVISIONS RELATING TO PREVIOUSLY REQUIRED STUDIES.

(a) REPEAL OF REQUIREMENT FOR CERTAIN STUDIES.—

(1) PIK STUDY.—Section 6 of the Payment-in-Kind Tax Treatment Act of 1983 is hereby repealed.

(2) ACCOUNTING METHODS FOR INVENTORY.—Section 238 of the Economic Recovery Tax Act of 1981 is hereby repealed.

(b) CHANGES IN DUE DATES FOR CERTAIN PERIODIC STUDIES.—

(1) REPORTS ON POSSESSIONS CORPORATIONS.—Effective for reports for calendar years after 1982, subsection (a) of section 441 of the Tax Reform Act of 1984 is amended by striking out “shall,” and all that follows through “setting forth” and inserting in lieu thereof “shall, during 1988 and each fourth calendar year thereafter, submit a report to the Congress (using the most recent information available) setting forth”.

26 USC 61 note.

26 USC 471 note.

26 USC 936 note.

(2) REPORTS ON FSC PROVISIONS.—

(A) Subsection (a) of section 804 of the Tax Reform Act of 1984 is amended by striking out “shall,” and all that follows through “setting forth” and inserting in lieu thereof “shall, during 1990 and each fourth calendar year thereafter, submit a report to the Congress (using the most recent information available) setting forth”.

26 USC 921 note.

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 804(a) of the Tax Reform Act of 1984.

Effective date.
26 USC 921 note.**SEC. 6253. REPEAL OF SECRETARIAL AUTHORITY TO PRESCRIBE CLASS LIVES.**

Paragraph (1) of section 168(i) of the 1986 Code is amended to read as follows:

“(1) **CLASS LIFE.**—Except as provided in this section, the term ‘class life’ means the class life (if any) which would be applicable with respect to any property as of January 1, 1986, under subsection (m) of section 167 (determined without regard to paragraph (4) and as if the taxpayer had made an election under such subsection). The Secretary, through an office established in the Treasury, shall monitor and analyze actual experience with respect to all depreciable assets.”

SEC. 6254. AMENDMENTS RELATED TO CRUDE OIL WINDFALL PROFIT TAX ACT OF 1980.26 USC 4997
note.

The reporting requirements of section 4997 of former chapter 45 of subtitle D of the Internal Revenue Code of 1986, and the related regulations thereunder, are repealed: *Provided*, That this repeal is effective only for crude oil removed after December 31, 1987, for which no tax is due or withheld under former chapter 45 of subtitle D of the Internal Revenue Code of 1986.

Subtitle L—Provisions Relating to Corporations and Personal Holding Companies

SEC. 6276. AUTHORITY TO PAY REFUNDS TO CERTAIN FIDUCIARIES OF INSOLVENT MEMBERS OF AFFILIATED GROUPS.

Section 6402 of the 1986 Code (relating to authority to make credits or refunds) is amended by adding at the end thereof the following new subsection:

“(i) **REFUNDS TO CERTAIN FIDUCIARIES OF INSOLVENT MEMBERS OF AFFILIATED GROUPS.**—Notwithstanding any other provision of law, in the case of an insolvent corporation which is a member of an affiliated group of corporations filing a consolidated return for any taxable year and which is subject to a statutory or court-appointed fiduciary, the Secretary may by regulation provide that any refund for such taxable year may be paid on behalf of such insolvent corporation to such fiduciary to the extent that the Secretary determines that the refund is attributable to losses or credits of such insolvent corporation.”

SEC. 6277. APPLICATION OF NET OPERATING LOSS LIMITATIONS TO BANKRUPTCY REORGANIZATIONS.

(a) **TIME FOR DETERMINING WHETHER OWNERSHIP CHANGE OCCURS.**—Section 621(f)(5) of the Tax Reform Act of 1986 is amended

26 USC 382 note.

by adding at the end thereof the following new sentence: "The determination as to whether an ownership change has occurred during the period beginning January 1, 1987, and ending on the final settlement of any reorganization or proceeding described in the preceding sentence shall be redetermined as of the time of such final settlement."

26 USC 382
note.

(b) **ELECTION TO HAVE NEW RULES APPLY.**—Section 621(f)(5) of the Tax Reform Act of 1986 is amended by striking out "In" and inserting in lieu thereof "Unless the taxpayer elects not to have the provisions of this paragraph apply, in".

26 USC 382
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in section 621(f)(5) of the Tax Reform Act of 1986.

26 USC 7503
note.

SEC. 6278. APPLICATION OF SECTION 7503 OF 1986 CODE FOR PURPOSES OF SECTION 10222(b) OF REVENUE ACT OF 1987.

Section 7503 of the 1986 Code shall apply for purposes of determining whether any disposition meets the requirements of section 10222(b)(2)(B) of the Revenue Act of 1987. If any disposition meets the requirements of such section by reason of the preceding sentence, for all purposes of the 1986 Code, such disposition shall be deemed to have occurred on December 31, 1988.

SEC. 6279. INTEREST EARNED BY BROKERS OR DEALERS NOT TAKEN INTO ACCOUNT AS PERSONAL HOLDING COMPANY INCOME.

(a) **IN GENERAL.**—Paragraph (1) of section 543(a) of the 1986 Code is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and" and by adding at the end thereof the following new subparagraph:

"(D) interest received by a broker or dealer (within the meaning of section 3(a) (4) or (5) of the Securities and Exchange Act of 1934) in connection with—

"(i) any securities or money market instruments held as property described in section 1221(1),

"(ii) margin accounts, or

"(iii) any financing for a customer secured by securities or money market instruments."

26 USC 543 note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to interest received after the date of the enactment of this Act, in taxable years ending after such date.

26 USC 543 note.

SEC. 6280. TREATMENT OF CERTAIN BANK HOLDING COMPANIES.

(a) **GENERAL RULE.**—For purposes of subtitle A of the 1986 Code, the term "personal holding company income" shall not include any dividend received by a qualified bank holding company from a 25-percent owned bank during any taxable year ending in 1989 or 1990.

(b) **\$3,000,000 LIMITATION.**—The aggregate amount excluded from the personal holding company income of any qualified bank holding company under subsection (a) for the taxable year shall not exceed \$3,000,000.

(c) **QUALIFIED BANK HOLDING COMPANY.**—For purposes of this section, the term "qualified bank holding company" means any bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956) if 80 percent or more (by value) of the

assets of such company at all times during the taxable year consist of stock in 1 or more 25-percent owned banks.

(d) **25-PERCENT OWNED BANK.**—For purposes of this section, the term “25-percent owned bank” means any bank (as defined in section 581 of the 1986 Code) if at least 25 percent of the stock of such bank (by vote and value) is owned by the bank holding company.

SEC. 6281. AUTHORITY TO WAIVE APPRAISAL REQUIREMENT FOR CERTAIN CHARITABLE CONTRIBUTIONS OF PROPERTY.

26 USC 170 note.

Notwithstanding paragraph (2) of section 155(a) of the Tax Reform Act of 1984, the Secretary of the Treasury or his delegate may in the regulations prescribed pursuant to such section waive the requirement of a qualified appraisal in the case of a qualified contribution (within the meaning of section 170(e)(3)(A) of the 1986 Code) of property described in section 1221(1) with a claimed value in excess of \$5,000.

SEC. 6282. DISTRIBUTIONS BY COOPERATIVE HOUSING CORPORATIONS.

(a) **IN GENERAL.**—Section 216 of the 1986 Code is amended by adding at the end thereof the following new subsection:

“(e) **DISTRIBUTIONS BY COOPERATIVE HOUSING ASSOCIATIONS.**—Except as provided in regulations, no gain or loss shall be recognized on the distribution by a cooperative housing association of a dwelling unit to a stockholder in such corporation if such distribution is in exchange for the stockholder’s stock in such corporation and such exchange qualifies for nonrecognition of gain under section 1034(f).”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect as if included in the amendments made by section 631 of the Tax Reform Act of 1986.

26 USC 216 note.

Subtitle M—Miscellaneous Provisions

SEC. 6301. REPEAL OF LIMIT ON LONG-TERM BONDS.

The last sentence of section 3102(a) of title 31, United States Code, is hereby repealed.

SEC. 6302. ONE-YEAR EXTENSION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

Clauses (i) and (ii) of section 29(f)(1)(A) of the 1986 Code (relating to application of section) are each amended by striking out “January 1, 1990” and inserting in lieu thereof “January 1, 1991”.

SEC. 6303. CERTAIN DISCHARGE OF DEBT INCOME NOT INCLUDED IN ADJUSTED BOOK INCOME.

(a) **GENERAL RULE.**—Paragraph (2) of section 56(f) of the 1986 Code (defining adjusted net book income) is amended by redesignating subparagraph (I) as subparagraph (J) and by inserting after subparagraph (H) the following new subparagraph:

“(I) **EXCLUSION OF CERTAIN INCOME FROM TRANSFER OF STOCK FOR DEBT.**—In determining adjusted net book income, there shall not be taken into account any income resulting from the transfer of stock by the corporation issuing such stock to a creditor in satisfaction of its indebtedness. The preceding sentence shall apply only in the case of a debtor in a title 11 case (as defined in section 108(d)(2)) or to the

extent the debtor is insolvent (as defined in section 108(d)(3)).”

26 USC 56 note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1986.

SEC. 6304. NONCONVENTIONAL FUELS CREDIT.

(a) **IN GENERAL.**—Section 53(d)(1)(B) of the 1986 Code (relating to credit not allowed for exclusion preferences) is amended by adding at the end thereof the following new clause:

“(iii) **SPECIAL RULE.**—The adjusted net minimum tax for the taxable year shall be increased by the amount of the credit not allowed under section 29 (relating to credit for producing fuel from a nonconventional source) solely by reason of the application of section 29(b)(5)(B).”

26 USC 53 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986.

26 USC 3121

note.

State and local governments.

SEC. 6305. TREATMENT OF CERTAIN FAMILY SERVICES PROVIDERS.

(a) **IN GENERAL.**—A State may treat a person who renders dependent care or similar services as other than an employee employment tax purposes for the applicable period if all of the following conditions are satisfied with respect to such person for such applicable period:

(i) The person does not provide any dependent care or similar services in any facility owned or operated by the State.

(ii) The person is compensated by the State for such services, directly or indirectly, out of funds provided pursuant to chapter 7 of title 42 of the United States Code, or the provisions and amendments made by the Family Security Act of 1988.

(iii) The State does not treat the person, with respect to the provision of dependent care or similar services, as an employee for employment tax purposes.

(iv) The State files all Federal income tax returns (including information returns) required to be filed with respect to such person on a basis consistent with the State's treatment of such person as other than an employee beginning on the date of the enactment of this section.

(v) No more than ten percent of the State's employees are provided with insurance under title II of the Social Security Act pursuant to voluntary agreements with the Secretary of Health and Human Services under section 218 of such title.

(b) **STATE.**—For purposes of this section, the term “State” shall mean the government of the United States, District of Columbia, any State or political subdivision thereof, and any agency or instrumentality of any of the foregoing.

(c) **EMPLOYMENT TAX.**—For purposes of this section, the term “employment tax” means any tax imposed by subtitle C of the Internal Revenue Code of 1986.

(d) **APPLICABLE PERIOD.**—For purposes of this section, the term “applicable period” means the period beginning on January 1, 1984 and ending on December 31, 1990.

(e) **REPORT.**—The Secretary of the Treasury shall report to the Senate Committee on Finance and the House Committee on Ways and Means on the text status of day care providers compensated

uant to the program described in this section no later than
ember 31, 1989.

TITLE VII—RAILROAD UNEMPLOYMENT AND RETIREMENT PROGRAMS

Railroad
Unemployment
Insurance and
Retirement
Improvement
Act of 1988.
26 USC 367 note.

7001. SHORT TITLE.

his title may be cited as the “Railroad Unemployment Insurance
Retirement Improvement Act of 1988”.

7002. REFERENCES TO RAILROAD UNEMPLOYMENT INSURANCE ACT.

cept as otherwise expressly provided, whenever in this title an
ndment or repeal is expressed in terms of an amendment to, or
al of, a section or provision, the reference shall be considered to
ade to a section or other provision of the Railroad Unemploy-
t Insurance Act.

Subtitle A—Financing Provisions

7101. AMENDMENTS RELATING TO DEFINITION OF “COMPENSA- TION”.

IN GENERAL.—Section 1(i) is amended—

45 USC 351.

(1) by inserting “(1) IN GENERAL.—” after “(i)”;
(2) by striking out “: *Provided, however,* That in comput-
ing” and all that follows through “1983, shall be recognized.”
and inserting in lieu thereof “, except that in computing the
compensation paid to any employee, no part of any month’s
compensation in excess of the monthly compensation base (as
defined in subdivision (2)) for any month shall be recognized.”;
and

(3) by adding at the end thereof the following new subdivision:

(2) MONTHLY COMPENSATION BASE.—

“(A) IN GENERAL.—For purposes of subdivision (1), the term
‘monthly compensation base’ means the amount—

“(i) of \$400 for calendar months before January 1, 1984,

“(ii) of \$600 for calendar months after December 31, 1983
and before January 1, 1989; and

“(iii) computed under subparagraph (B) for months after
December 31, 1988.

“(B) COMPUTATION.—

“(i) IN GENERAL.—The amount of the monthly compensa-
tion base for each calendar year beginning after December
31, 1988, is the greater of—

“(I) \$600; or

“(II) the amount, as rounded under clause (iii) if
applicable, computed under the formula:

$$B=600\left(1+\frac{A-37,800}{56,700}\right)$$

“(ii) **MEANING OF SYMBOLS.**—For the purposes of the formula in clause (i)—

“(I) ‘B’ is the dollar amount of the monthly compensation base; and

“(II) ‘A’ is the amount of the applicable base with respect to tier 1 taxes, for the calendar year for which the monthly compensation base is being computed, as determined under section 3231(e)(2) of the Internal Revenue Code of 1986.

“(iii) **ROUNDING RULE.**—If the monthly compensation base computed under this formula is not a multiple of \$5, it shall be rounded to the nearest multiple of \$5, with such rounding being upward in the event the amount computed is equidistant between two multiples of \$5.”

45 USC 351. (b) **CONFORMING AMENDMENT WITH RESPECT TO SUBSIDIARY REMUNERATION RULE.**—Section 1(k) is amended by striking out “\$1,500” and inserting in lieu thereof “an amount that is equal to 2.5 times the monthly compensation base for months in such base year as computed under section 1(i) of this Act”.

45 USC 352. (c) **CONFORMING AMENDMENT WITH RESPECT TO LIMITATION ON TAKING ACCOUNT OF MONEY REMUNERATION.**—Section 2(c) is amended by striking out “not in excess of \$775 in any month shall be taken into account.” and inserting in lieu thereof “shall be taken into account that is not in excess of \$775 in any month before 1989 and, in any month in a base year after 1988, is not in excess of an amount that bears the same ratio to \$775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to \$600.”

45 USC 354. (d) **CONFORMING AMENDMENTS WITH RESPECT TO REQUIRED COMPENSATION AMOUNT.**—Section 4(a-2)(i)(A) is amended by striking out the semicolon at the end and inserting in lieu thereof “and before 1989 or, if any part of such compensation is paid in a calendar year after 1988, not less than an amount that is equal to 2.5 times the monthly compensation base for months in such calendar year, as computed under section 1(i) of this Act.”

45 USC 362. (e) **DUTY OF BOARD TO MAKE CERTAIN COMPUTATIONS.**—Section 12 is amended by adding at the end the following new subsection:

“(r) **DUTY OF BOARD TO MAKE CERTAIN COMPUTATIONS.**—

“(1) **COMPENSATION BASE.**—On or before December 1, 1988, and on or before December 1 of each year thereafter, the Board shall compute—

“(A) in accordance with section 1(i), the monthly compensation base which shall be applicable with respect to months in the next succeeding calendar year; and

“(B) the amounts described in section 1(k), section 2(c), section 3, and section 4(a-2)(i)(A) that are related to changes in the monthly compensation base.

“(2) **MAXIMUM DAILY BENEFIT RATE.**—On or before June 1, 1989, and on or before June 1 of each year thereafter, the Board

shall compute in accordance with section 2(a)(3) the maximum daily benefit rate which shall be applicable with respect to days of unemployment and days of sickness in registration periods beginning after June 30 of that year.

“(3) NOTICE IN FEDERAL REGISTER AND TO EMPLOYERS.—Not later than 10 days after each computation made under this subsection, the Board shall publish notice in the Federal Register and shall notify each employer and employee representative of the amount so computed.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act. 45 USC 351 note.

SEC. 7102. CONTRIBUTION ADJUSTMENTS.

(a) EMPLOYER CONTRIBUTIONS AND EXPERIENCE RATING.—Section 8 is amended by striking out “(a) Every employer” and all that follows through the end of subsection (a) and inserting in lieu thereof the following: 45 USC 358.

“(a) EMPLOYER CONTRIBUTION.—

“(1) IN GENERAL.—

“(A) GENERAL RULE.—

“(i) CONTRIBUTION RATE GENERALLY.—Every employer shall pay a contribution, with respect to having employees in his service, equal to the percentage determined under subparagraph (B), (C), or (D), whichever is applicable, of so much of the compensation paid in any calendar month by such employer to any employee as is not in excess of the monthly compensation base for that month as computed under section 1(i).

“(ii) MULTIPLE EMPLOYER LIMITATION.— If compensation is paid to an employee by more than one employer in any calendar month—

“(I) the contributions required by this subsection shall not apply to any amount of the aggregate compensation paid to such employee by all such employers in such calendar month which is in excess of such monthly compensation base; and

“(II) each employer (other than a subordinate unit of a national-railway-labor-organization employer) shall be liable for that portion of the contribution with respect to such compensation paid by all such employers which the compensation paid by him to such employee bears to the total compensation paid in such month by all such employers to such employee.

In the event that the compensation paid by such employers to the employee in such month is less than such monthly compensation base, each subordinate unit of a national-railway-labor-organization employer shall be liable for such portion of any additional contribution as the compensation paid by such employer to such employee in such month bears to the total compensation paid by all such employers to such employee in such month.

“(B) TRANSITIONAL RULE.—

“(i) 1ST, 2D, AND 3D CALENDAR YEARS.—Except as provided in clause (vi), with respect to compensation paid

in calendar years 1988, 1989, and 1990, the contribution rate shall be 8 percent.

“(ii) 4TH CALENDAR YEAR.—With respect to compensation paid in calendar year 1991, the contribution rate shall be the smaller of—

“(I) the maximum contribution limit computed under paragraph (20); or

“(II) the percentage computed pursuant to the following formula:

$$R = \frac{2A + B}{3}$$

“(iii) 5TH CALENDAR YEAR.—With respect to compensation paid in calendar year 1992, the contribution rate shall be the smaller of—

“(I) the maximum contribution limit computed under paragraph (20); or

“(II) the percentage computed pursuant to the following formula:

$$R = \frac{A + 2C}{3}$$

“(iv) MEANING OF SYMBOLS.—For purposes of the formulas in clauses (ii) and (iii)—

“(I) ‘R’ is the applicable contribution rate expressed as a percentage for months in the calendar year;

“(II) ‘A’ is the contribution rate determined under clause (i);

“(III) ‘B’ is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1991; and

“(IV) ‘C’ is the percentage rate for the employer, as determined under subparagraph (C), for calendar year 1992.

“(v) SPECIAL RULE FOR CERTAIN COMPUTATIONS.—For purposes of computing B and C in such formulas—

“(I) the percentage rate computed under subparagraph (C), if more than the maximum contribution limit computed under paragraph (20) shall not be reduced to that limit; and

“(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or a 12-quarter period ending on a given June 30 shall be made on the basis of a period beginning on January 1, 1990, and ending on that June 30, and the amount so computed shall be increased to an

amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

“(vi) **SPECIAL TRANSITION RULE FOR PUBLIC COMMUTER RAILROADS.**—With respect to each of calendar years 1989 and 1990, the contribution of an employer which on the date of the enactment of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 is a publicly funded and publicly operated carrier providing rail commuter service shall be equal to the amount of benefits attributable to such carrier, plus an amount equal to 0.65 percent of the total compensation paid by that employer in that year on which that employer's contribution would be based under clause (i) if such employer's contribution were determined under that clause.

“(C) **EXPERIENCE-RATED CONTRIBUTIONS.**—With respect to compensation paid in a calendar year that begins after December 31, 1992, the contribution rate for each employer shall be determined as follows:

“(i) **STEP 1.**—Compute the employer's benefit ratio as of the preceding June 30 to 4 decimal points in accordance with paragraph (2).

“(ii) **STEP 2.**—Subtract the employer's reserve ratio as of the preceding June 30 as computed to 4 decimal points in accordance with paragraph (4).

“(iii) **STEP 3.**—Subtract the pooled credit ratio for the calendar year, if any, as computed to 4 decimal points in accordance with paragraph (12).

“(iv) **STEP 4.**—Multiply by 100 the total arrived at under the steps set forth in clauses (i) through (iii) so as to obtain a percentage rate, which shall be rounded to the nearest 100th of 1 percent. If the total arrived at under such steps is 0 or less than 0, the percentage rate as so computed shall be 0.

“(v) **STEP 5.**—Add 0.65 to the percentage rate arrived at under clause (iv), representing the portion of the employer's contribution which is to be deposited to the credit of the fund under subsection (i).

“(vi) **STEP 6.**—Add the surcharge rate for the calendar year, if any, as computed under paragraph (14).

“(vii) **STEP 7.**—Add the pooled charge ratio for the calendar year, if any, as computed to 4 decimal points under paragraph (13) and multiplied by 100.

“(viii) **STEP 8.**—Reduce the percentage rate computed in accordance with the preceding steps to the maximum contribution limit computed under paragraph (20), if such rate is higher than such limit. The rate computed in accordance with the preceding steps, after any reduction under this clause, is the contribution rate.

“(D) **NEW-EMPLOYER CONTRIBUTION RATES.**—Notwithstanding subparagraphs (B) and (C), the contribution rate applicable to a new employer who does not become subject to this Act until after December 31, 1989, shall be determined as follows:

“(i) 1ST CALENDAR YEAR.—With respect to compensation paid in calendar months before the end of the first full calendar year in which the employer is subject to this Act, the contribution rate shall be the average contribution rate paid by all employers during the 3 calendar years preceding the calendar year before the calendar year in which the compensation is paid. The average contribution rate shall be determined—

“(I) by dividing the aggregate contributions paid by all employers under this subsection in those 3 calendar years by the aggregate compensation with respect to which such contributions were paid; and

“(II) by multiplying the resulting ratio as computed to 4 decimal points by 100.

“(ii) 2D CALENDAR YEAR.—With respect to compensation paid in calendar months in the next calendar year, the contribution rate shall be the smaller of—

“(I) the maximum contribution limit computed under paragraph (20); or

“(II) the percentage rate computed pursuant to the following formula:

$$R = \left(\frac{2(A2) + B}{3} \right)$$

“(iii) 3D CALENDAR YEAR.—With respect to compensation paid in calendar months in the third full calendar year in which the employer is subject to the coverage of this Act, the contribution rate shall be the smaller of—

“(I) the maximum contribution limit computed under paragraph (20); or

“(II) the percentage rate computed pursuant to the following formula:

$$R = \frac{A3 + 2C}{3}$$

“(iv) SUBSEQUENT CALENDAR YEARS.—With respect to all calendar months in calendar years subsequent to that calendar year, the contribution rate shall be determined under subparagraph (C).

“(v) MEANING OF SYMBOLS.—For purposes of the formulas in clauses (ii) and (iii)—

“(I) ‘R’ is the applicable contribution rate expressed as a percentage for months in the calendar year;

"(II) 'A1' is the contribution rate determined under clause (i) for such employer's first full calendar year;

"(III) 'A2' is the contribution rate which would have been determined under clause (i) if the employer's second calendar year had been its first full calendar year;

"(IV) 'A3' is the contribution rate which would have been determined under clause (i) if the employer's third calendar year had been such employer's first full calendar year;

"(V) 'B' is the contribution rate for the employer as determined under subparagraph (C) for the employer's second full calendar year; and

"(VI) 'C' is the contribution rate for the employer as determined under subparagraph (C) for the employer's third full calendar year.

"(vi) **SPECIAL RULE FOR CERTAIN COMPUTATIONS.**—For purposes of computing B and C in such formulas—

"(I) the percentage rate computed under subparagraph (C), shall not be reduced under clause (viii) of that subparagraph; and

"(II) any computations which under subparagraph (C) are to be made on the basis of a 4-quarter or 12-quarter period ending on a given June 30 shall be made on the basis of a period commencing with the first day of the first calendar quarter that begins after the date on which the employer first commenced paying compensation subject to this Act and ending on that June 30, and the amount so computed shall be increased to an amount that bears the same ratio to the amount so computed as 4 or 12, as appropriate, bears to the number of calendar quarters in the period on which the computation was based.

"(2) **BENEFIT RATIO.**—An employer's benefit ratio as of any given June 30 shall be determined by dividing all benefits charged to the employer under paragraph (15) during the 12 calendar quarters ending on such June 30 by the employer's 3-year compensation base as of such June 30 as computed under paragraph (3).

"(3) **3-YEAR COMPENSATION BASE.**—An employer's 3-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the employer under this subsection in the 12 calendar quarters ending on such June 30.

"(4) **RESERVE RATIO.**—An employer's reserve ratio as of any given June 30 shall be computed by dividing the employer's reserve balance as of such June 30, as computed under paragraph (6), by that employer's 1-year compensation base as of such June 30, as computed under paragraph (5). The employer's reserve ratio may be either a positive or a negative figure, depending upon whether the employer's reserve balance is a positive or negative figure.

"(5) **1-YEAR COMPENSATION BASE.**—An employer's 1-year compensation base as of any given June 30 is the aggregate compensation with respect to which contributions were paid by the

employer under this subsection in the 4 calendar quarters ending on such June 30.

“(6) **RESERVE BALANCE.**—An employer’s reserve balance as of any given June 30 shall be determined by subtracting the employer’s cumulative benefit balance as of such June 30, computed under paragraph (7), from the employer’s net cumulative contribution balance as of such June 30, computed under paragraph (8). An employer’s reserve balance may be either positive or negative, depending upon whether or not that employer’s net cumulative contribution balance exceeds the employer’s cumulative benefit balance.

“(7) **CUMULATIVE BENEFIT BALANCE.**—An employer’s cumulative benefit balance as of any given June 30 shall be determined by adding—

“(A) the net amount of the benefits charged to the employer under paragraph (15) on or after January 1, 1990; and

“(B) the cumulative amount of the employer’s unallocated charges for the same period, if any, as computed under paragraph (9).

“(8) **NET CUMULATIVE CONTRIBUTION BALANCE.**—An employer’s net cumulative contribution balance as of any given June 30 shall be determined as follows:

“(A) **STEP 1.**—Compute the sum of

“(i) all contributions paid by the employer pursuant to this subsection;

“(ii) that portion of the tax imposed under section 3321(a) of the Internal Revenue Code of 1986 that is attributable to the surtax rate under section 516(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988; and

“(iii) any taxes paid by the employer pursuant to section 3321(a) of the Internal Revenue Code of 1986 (after the outstanding balance of loans made under section 10(d) before October 1, 1985, plus interest, have been paid);

on or after January 1, 1990.

“(B) **STEP 2.**—Subtract an amount equal to the amount of such contributions deposited to the credit of the fund under subsection (i).

“(C) **STEP 3.**—Add an amount equal to the aggregate amount by which such contributions were reduced in prior calendar years as a result of pooled credits, if any, under paragraph (1)(C)(iii).

“(9) **UNALLOCATED CHARGE.**—An employer’s unallocated charge as of any given June 30 is the amount that as of such June 30 bears the same ratio to the system unallocated charge balance, computed under paragraph (10), as the employer’s 1-year compensation base, computed under paragraph (5), bears to the system compensation base computed under paragraph (11).

“(10) **SYSTEM UNALLOCATED CHARGE BALANCE.**—The system unallocated charge balance as of any given June 30 shall be determined as follows:

“(A) **STEP 1.**—Compute the aggregate amount of all interest paid by the account on loans from the Railroad Retirement Account after September 30, 1985, pursuant to

section 10(d), during the 4 calendar quarters ending on that June 30.

“(B) STEP 2.—Add the aggregate amount of any additions to the system unallocated charge balance specified in paragraphs (15) and (16), during that period.

“(C) STEP 3.—Add the aggregate amount of any other expenditures by the account during that period not chargeable to any individual employer under paragraph (15) or to the fund under section 11.

“(D) STEP 4.—Subtract the aggregate amount of all income to the account, under section 10(a)(iv) or section 10(a)(vii), during that period.

“(E) STEP 5.—Subtract the aggregate amount of all transfers to the account, pursuant to section 11(d), during that period.

“(F) STEP 6.—Subtract the aggregate amount of all other income and receipts of the account, during that period, which are not assigned to individual employer balances.

“(G) STEP 7.—Subtract the net cumulative contribution balance of each employer whose balance has been cancelled pursuant to paragraph (16), during that period, calculated as of the date of such cancellation.

“(11) SYSTEM COMPENSATION BASE.—The system compensation base as of any given June 30 shall be determined by adding together the amounts of the 1-year compensation bases of all employers and employee representatives subject to this Act, computed in accordance with paragraph (5), as of such June 30.

“(12) POOLED CREDIT RATIO.—The pooled credit ratio, if any, for a calendar year shall be determined as follows:

“(A) STEP 1.—Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 10(d) before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of \$6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a pooled credit ratio for the calendar year only if that balance is in excess of the greater of \$250,000,000 or of the amount that bears the same ratio to \$250,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of that June 30, 1991, as computed in accordance with paragraph (11).

“(B) STEP 2.—If there is such an excess amount, divide that excess amount by the system compensation base as of the June 30 preceding the calendar year. The result is the pooled credit ratio for the calendar year.

“(13) POOLED CHARGE RATIO.—The pooled charge ratio, if any, for a calendar year shall be determined as follows:

“(A) STEP 1.—With respect to each employer whose contribution rate for that calendar year as computed through step 6 under paragraph (1)(C) was greater than the maximum contribution limit computed under paragraph (20), multiply the employer's 1-year compensation base as of the

preceding June 30, as computed in accordance with paragraph (5), by the difference between—

“(i) the percentage rate determined under subparagraph (B), (C), or (D) of paragraph (1) before the reduction to the maximum contribution limit; and

“(ii) the maximum contribution limit.

“(B) STEP 2.—Add the amounts arrived at under step 1 so as to obtain an aggregate amount for all such employers.

“(C) STEP 3.—For each employer whose contribution rate as computed through step 3 under paragraph (1)(C) was less than 0, the percentage rate by which such employer's rate was raised in order to bring that rate to 0 shall be multiplied by that employer's 1-year compensation base as of the preceding June 30. Subtract the total of the amounts computed under the preceding sentence for all employers from the amount arrived at in step 2.

“(D) STEP 4.—Divide the aggregate amount arrived at under step 3 by the system compensation base as of the preceding June 30 as computed under paragraph (11) minus the one-year compensation base of those employers whose rates computed through step 6 of paragraph (1)(C) exceeded the maximum contribution rate computed under paragraph (20). The result is the pooled charge ratio for the calendar year.

“(14) SURCHARGE RATE.—The surcharge rate for a calendar year, if any, shall be determined as follows:

“(A) STEP 1.—Compute the balance to the credit of the account as of the close of business on the preceding June 30, including any amounts in the account attributable to loans made under section 10(d) before October 1, 1985, but disregarding the obligation to repay such loans and interest thereon. In determining such balance as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on such date as is in excess of \$6,000,000 shall be deemed to be part of the balance to the credit of such account. There will be a surcharge rate for the calendar year only if that balance is less than the greater of \$100,000,000 or of the amount that bears the same ratio to \$100,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11).

“(B) STEP 2.—(i) If the balance to the credit of the account is less than the greater of the amounts referred to in the 2nd sentence of step 1 but is equal to or more than the greater of \$50,000,000 or of the amount that bears the same ratio to \$50,000,000 as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, then the surcharge rate for the calendar year shall be 1.5 percent.

“(ii) If the balance to the credit of the account is less than the greater of the amounts referred to in the clause (i), but greater than or equal to zero, then the surcharge rate for the calendar year shall be 2.5 percent.

“(iii) If the balance to the credit of the account is less than zero, the surcharge rate for the calendar year shall be 3.5 percent.

(15) CHARGEABLE BENEFITS.—

“(A) IN GENERAL.—Beginning January 1, 1990, all benefits paid to an employee for days of unemployment or days of sickness shall be charged to that employee’s base year employer by adding amounts equal to the amounts of such benefits to the employer’s cumulative benefit balance except that benefits paid by reason of strikes or work stoppages growing out of labor disputes shall not be added to the employer’s cumulative benefit balance but instead shall be added to the system unallocated charge balance.

“(B) ADJUSTMENTS.—A sum equal to each amount realized in recovery for overpayment, erroneous payment, or reimbursement of benefits and credited to the account pursuant to section 10(a)(v) or 10(a)(viii) shall be subtracted from the cumulative benefit balances of the employers of the employees to whom such an amount was paid as a benefit in the proportion to the amount by which each such employer’s cumulative benefit balance was increased as a result of the payment of the benefit.

“(C) MULTIPLE EMPLOYERS.—

“(i) IN GENERAL.—All benefits paid to an employee who had more than 1 base-year employer shall be charged to the cumulative benefit balances of the employee’s base year employers—

“(I) in reverse chronological order of the employee’s employment with each such employer in the base year if the employer at the time of the claim was the last base year employer, and the amount charged to each employer shall not exceed the compensation paid by that employer to the employee in the base year; and

“(II) in all other cases, in the same ratio as the compensation paid to such employee by the employer bears to the total of such compensation paid to such employees by all such employers in the base year.

“(ii) SPECIAL RULE FOR EMPLOYER WITH CANCELLED BALANCES.—All benefits chargeable under this subparagraph to an employer for which the Board has cancelled balances under paragraph (16) shall be added to the system unallocated charge balance.

(16) DEFUNCT EMPLOYER.—Whenever the Board determines, pursuant to such regulations as the Board may prescribe, that an employer has permanently ceased to pay compensation with respect to which contributions are payable pursuant to this section, the Board shall, effective on the date of the Board’s termination, transfer the employer’s net cumulative contribution balance as a subtraction from, and cumulative benefit balance as an addition to, the system unallocated charge balance and cancel all other accumulations of the employer.

(17) INDIVIDUAL EMPLOYER RECORD.—

“(A) IN GENERAL.—As of January 1, 1990, the Board shall commence maintaining an individual employer record with respect to each employer, and the records necessary to

determine pooled charges, pooled credits and unallocated charge balances for the system. Whenever a new employer begins paying compensation with respect to which contributions are payable pursuant to this subsection, the Board shall establish and maintain an individual employer record for such employer.

“(B) **DEFINITION.**—As used in this paragraph, the term ‘individual employer record’ means a record of an individual employer’s benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, reserve balance, net cumulative contribution balance, and cumulative benefit balance.

“(18) **JOINT EMPLOYER RECORDS.**—Pursuant to regulations prescribed by the Board, the Board may allow 2 or more employers, upon application, to establish and maintain, or to discontinue, a joint individual employer record for such employers as though such joint record constituted a single employer’s individual employer record.

“(19) **MERGERS, CONSOLIDATIONS, OR OTHER CHANGES IN EMPLOYER IDENTITY.**—

“(A) **WITH OTHER EMPLOYERS.**—In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another employer and the combination entails no partitioning of the property of the employer, the individual employer records of the 2 employers shall be combined into a joint individual employer record if the parties request such joint treatment pursuant to paragraph (18) or if the Board otherwise determines, pursuant to regulations prescribed by the Board, that such joint treatment is desirable.

“(B) **WITH NONEMPLOYERS.**—In the event of a merger, consolidation, unification, or reorganization in which an employer combines with another entity that is not an employer, the employer’s individual employer record shall attach to the combined entity.

“(C) **SALE OF ASSETS.**—In the event property of an employer is sold or transferred to another employer or other entity, or is partitioned among 2 or more employers or entities, the cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of the employer shall be prorated among the employers which receive the property, including any entities which become employers by virtue of such transfer or partition, in such equitable manner as the Board by regulation shall prescribe.

“(D) **REINCORPORATION.**—The cumulative benefit balance, net cumulative contribution balance, 1-year compensation base, and 3-year compensation base of an employer that reincorporates or otherwise alters its corporate identity in a transaction not involving a merger, consolidation, or unification shall attach to the reincorporated or altered entity.

“(E) **ABANDONMENT.**—If an employer abandons property or discontinues service but continues to operate as an employer, the employer’s individual employer record shall continue to be calculated as provided in this subsection without retroactive adjustment.

“(20) **MAXIMUM CONTRIBUTION LIMIT.**—The maximum contribution limit with respect to a calendar year is 12 percent, unless a 3.5 percent surcharge under paragraph (14) is in effect with respect to that calendar year. If such a surcharge is in effect the maximum contribution limit with respect to that calendar year is 12.5 percent.

“(21) **SPECIAL RULES FOR CERTAIN COMPUTATIONS UNDER PARAGRAPH (1) (C).**—(A) Any computation that is to be made under paragraph (1)(C) on the basis of a 12-quarter period ending on a given June 30 shall be made on the basis of a period—

“(i) beginning on the later of—

“(I) January 1, 1990;

“(II) the first day of the first calendar quarter that begins after the date on which the employer first began to pay compensation subject to this Act; or

“(III) July 1 of the third calendar year preceding that June 30; and

“(ii) ending on that June 30.

“(B) The amount computed under subparagraph (A) shall be increased to an amount that bears the same ratio to the amount computed as 12 bears to the number of calendar quarters on which the computation is based.”

EMPLOYEE REPRESENTATIVE CONTRIBUTION.—Subsection (b) of section 8 is amended to read as follows:

45 USC 358.

EMPLOYEE REPRESENTATIVE CONTRIBUTION.—Each employee representative shall pay a contribution with respect to so much of compensation paid to him for services performed as an employee representative as is not in excess of the monthly compensation base determined in accordance with section 1(i), at a rate which shall be determined under subsection (a) in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in this section.

EXTENSION OF REMEDIES.—Section 8(h) is amended by adding at the end the following: “The remedies available under the first sentence of this subsection for an employer or employee representative who contests the amount of contributions payable by him shall apply with respect to a contention that the contribution rate determined by the Board under subsection (a) or (b) to be applicable to an employer or employee representative is inaccurate or otherwise improper.”

BOARD PROCLAMATION OF BALANCE.—Section 8 is amended—
(1) by redesignating subsections (c) through (h) as subsections (d) through (k), respectively; and
(2) by inserting after subsection (b) the following new subsections:

BOARD PROCLAMATION OF BALANCE.—

“(1) **IN GENERAL.**—Not later than October 15, 1990, and October 15 of each year thereafter the Board shall proclaim—

“(A) the balance to the credit of the account as of the preceding June 30 for purposes of paragraphs (12) and (14) of subsection (a);

“(B) the balance of any advances to the account under section 10(d) after September 30, 1985, that has not been repaid with interest as provided in such section as of September 30 of that year;

“(C) the system compensation base as of that June 30 as computed in accordance with paragraph (11) of that subsection;

“(D) the system unallocated charge balance as of that June 30, as computed in accordance with paragraph (10) of that subsection; and

“(E) the pooled credit ratio, the pooled charge ratio, and the surcharge rate, if any, as determined under paragraph (12), (13), or (14) of that subsection and applicable in the following calendar year.

Federal
Register,
publication.

“(2) PUBLICATION OF NOTICE.—As soon as is practicable after such proclamation, the Board shall publish notice in the Federal Register of the amounts so determined and proclaimed.

“(d) NOTIFICATIONS BY BOARD.—(1) Not later than the last day of any calendar quarter that begins after March 31, 1990, the Board shall notify each employer and employee representative of its net cumulative contribution balance and cumulative benefit balance as of the end of the preceding calendar quarter, as computed in accordance with paragraphs (7) and (8) of subsection (a) as of the last day of such preceding calendar quarter rather than as of a given June 30 if such last day is not a June 30.

“(2) Not later than October 15, 1990, and October 15 of each year thereafter, the Board shall notify each employer and employee representative of its benefit ratio, reserve ratio, 1-year compensation base, 3-year compensation base, unallocated charge, and reserve balance as of the preceding June 30 as computed in accordance with paragraphs (2), (3), (4), (5), (6), and (9) of subsection (a), and of the contribution rate applicable to the employer or employee representative in the following calendar year as computed under paragraphs (1) (B), (C), or (D) of that subsection.

“(e) INFORMATION TO VERIFY ACCURACY TO BE MADE AVAILABLE.—Notwithstanding any other provision of law, upon request by an employer or employee representative, the Board shall make available to such employer or employee representative any information available to the Board which may be necessary to verify the accuracy of a contribution rate determined by the Board to be applicable to such employer or employee representative, or of any component of that contribution rate including the accuracy of the employer's individual employer record, upon payment by such employer or employee representative to the Board of the cost incurred by the Board in making such information available. The amounts so paid to the Board shall be credited to and deposited in the fund.”.

45 USC 358 note.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act.

SEC. 7103. ADMINISTRATIVE EXPENSES.

45 USC 358.

(a) CHANGE IN PERCENTAGE TO BE DEPOSITED IN FUND.—Section 8(i), as so redesignated by section 512(d), is amended by striking out “0.5” and inserting in lieu thereof “0.65”.

45 USC 360.

(b) CONFORMING AMENDMENTS.—(1) Section 10(a) is amended by striking out “0.5” and inserting in lieu thereof “0.65”.

45 USC 361.

(2) Section 11(a) is amended by striking out “0.5” and inserting in lieu thereof “0.65”.

45 USC 358 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to compensation paid in months beginning after September 30, 1988.

104. NOTIFICATION TO EMPLOYER.

IN CONNECTION WITH CLAIM.—Section 5(b) is amended by adding at the end thereof the following: “When a claim for benefits is made with the Board, the Board shall provide notice of such claim to the claimant’s base-year employer or employers and afford such employer or employers an opportunity to submit information relating to the claim before making an initial determination on the claim. When the Board initially determines to pay benefits to a claimant under this Act, the Board shall provide notice of such determination to the claimant’s base-year employer or employers.”.

IN CONNECTION WITH ADMINISTRATIVE REVIEW.—Section 5(c) is amended—

(1) by inserting “(1)” after “(c)”;

(2) by inserting at the end of the first paragraph the following: “In any such case the Board or the person or reviewing body so established or assigned shall, by publication or otherwise, notify all parties properly interested of their right to participate in the hearing and of the time and place of the hearing.”;

(3) by inserting “(2)” at the beginning of the second paragraph;

(4) by inserting after the second paragraph the following: “Any base-year employer of a claimant whose claim for benefits has been granted in whole or in part, either in an initial determination with respect thereto or in a determination after a hearing pursuant to paragraph (1), and who contends that the determination is erroneous for a reason or reasons other than a reason that is reviewable under paragraph (4), may appeal to the Board for review of such determination. Despite such an appeal, the benefits awarded shall be paid to such claimant, subject to recovery by the Board if and to the extent found on the appeal to have been erroneously awarded. The Board shall take such action as is appropriate to recover the amount of such benefits including if feasible reimbursement in subsequent payments pursuant to the first two paragraphs of section 2(d) of this Act. Upon an appeal, the Board shall allow the determination appealed from and for such review may designate one of its officers or employees to receive evidence and submit it to the Board thereof together with recommendations. In any case the Board or the person so designated shall, by publication or otherwise, notify all parties properly interested of their right to participate in the proceeding and, if a hearing is to be held, of the time and place of the hearing. At the request of any party properly interested the Board shall provide for a hearing, and may provide for a hearing on its own motion. The Board shall prescribe regulations governing the appeals provided for in this paragraph and for actions upon such appeal.”;

(5) by inserting “(4)” at the beginning of the third paragraph;

(6) by inserting “(5)” at the beginning of the fourth paragraph;

(7) by striking out “two” in the first sentence of the fourth paragraph and inserting in lieu thereof “three”;

(8) by inserting before the final paragraph the following:

“(9) For purposes of this subsection and subsections (d) and (f), any base-year employer of the claimant is a properly interested party.”;

(9) by inserting “(7)” at the beginning of the final paragraph.

IN CONNECTION WITH JUDICIAL REVIEW.—Section 5(f) is amended—

45 USC 355.

Regulations.

(1) by inserting after "member," in the first sentence "or any base-year employer of the claimant,"; and

(2) by inserting after the second sentence the following: "A copy of such petition also shall forthwith be served upon any other properly interested party, and such party shall be a party to the review proceeding.".

45 USC 362.

(d) **CONFORMING AMENDMENTS WITH RESPECT TO LIMITATION ON ADMINISTRATIVE DISCLOSURE.**—Section 12(d) is amended—

(1) by striking out "and" where it appears before "(iii)"; and

(2) by striking out the period at the end of the first sentence and inserting in lieu thereof the following: "; and (iv) the Board shall disclose to any base-year employer of a claimant for benefits any information, including information as to the claimant's identity, that is necessary or appropriate to notify such employer of the claim for benefits or to full and fair participation by such employer in an appeal, hearing, or other proceeding relative to the claim pursuant to section 5 of this Act.".

(e) **CONFORMING AMENDMENT WITH RESPECT TO COURT PROCEEDINGS LIMITATION.**—Section 12(n) is amended by striking out "court" in the proviso to the second paragraph.

45 USC 355 note.

(f) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 1990.

45 USC 369.

SEC. 7105. ANNUAL REPORT.

On or before July 1 of 1989, and of each calendar year thereafter, the Railroad Retirement Board shall submit to the Congress a report on the financial status of the railroad unemployment insurance system under various economic and employment assumptions. Such report shall include any recommendation for financing changes which might be advisable, including any adjustment the Railroad Retirement Board recommends regarding the rates of employer contributions.

SEC. 7106. AMENDMENTS RELATING TO RAILROAD UNEMPLOYMENT REPAYMENT TAX.

(a) **IN GENERAL.**—Chapter 23A of the 1986 Code (relating to railroad unemployment repayment tax) is amended to read as follows:

"CHAPTER 23A. RAILROAD UNEMPLOYMENT REPAYMENT TAX

"Sec. 3321. Imposition of tax.

"Sec. 3322. Definitions.

"SEC. 3321. IMPOSITION OF TAX.

"(a) **GENERAL RULE.**—There is hereby imposed on every rail employer for each calendar month an excise tax, with respect to having individuals in his employ, equal to 4 percent of the total rail wages paid by him during such month.

"(b) **TAX ON EMPLOYEE REPRESENTATIVES.**—

"(1) **IN GENERAL.**—There is hereby imposed on the income of each employee representative a tax equal to 4 percent of the rail wages paid to him during the calendar month.

"(2) **DETERMINATION OF WAGES.**—The rail wages of an employee representative for purposes of paragraph (1) shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were a rail employer.

c) **TERMINATION IF LOANS TO RAILROAD UNEMPLOYMENT FUND AID.**—The tax imposed by this section shall not apply to rail es paid on or after the 1st day of any calendar month if, as of a 1st day, there is—

“(1) no balance of transfers made before October 1, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

“(2) no unpaid interest on such transfers.

C. 3322. DEFINITIONS.

a) **RAIL EMPLOYER.**—For purposes of this chapter, the term ‘rail employer’ means any person who is an employer as defined in ion 1 of the Railroad Unemployment Insurance Act.

b) **RAIL WAGES.**—For purposes of this chapter, the term ‘rail es’ means, with respect to any calendar month, so much of the uneration paid during such month which is subject to contribu- s under section 8(a) of the Railroad Unemployment Insurance

c) **EMPLOYEE REPRESENTATIVE.**—For purposes of this chapter, the n ‘employee representative’ has the meaning given such term by ion 1 of the Railroad Unemployment Insurance Act.

d) **CERTAIN RULES MADE APPLICABLE.**—For purposes of this chap- rules similar to the rules of section 3307 and 3308 shall apply.”

e) **CONTINUATION OF SURTAX RATE THROUGH 1990.**—

(1) **IN GENERAL.**—In the case of any calendar month beginning before January 1, 1991—

(A) there shall be substituted for “4 percent” in subsections (a) and (b) of section 3321 of the 1986 Code the percentage equal to the sum of—

(i) 4 percent, plus

(ii) the surtax rate (if any) for such calendar month, and

(B) subsection (c) of such section shall not apply to so much of the tax imposed by such section as is attributable to the surtax rate.

(2) **SURTAX RATE.**—For purposes of paragraph (1), the surtax rate shall be—

(A) 3.5 percent for each month during a calendar year if, as of September 30, of the preceding calendar year, there was a balance of transfers (or unpaid interest thereon) made after September 30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

(B) zero for any other calendar month.

f) **TECHNICAL AND CONFORMING AMENDMENTS.**—

(1) Subsection (d) of section 6157 of the 1986 Code (relating to quarterly payment of railroad unemployment repayment tax) is hereby repealed.

(2) Paragraph (2) of section 6201(b) of the 1986 Code (relating to amount not to be assessed) is amended by striking out “or tax imposed by section 3321”.

(3) Section 6317 of the 1986 Code (relating to payments of Federal unemployment tax for calendar quarter) is amended—

(A) by striking out “or tax imposed by section 3321”, and

(B) by striking out “and 23A, as the case may be,”.

26 USC 3321
note.

(4) Subsection (e) of section 6513 of the 1986 Code (relating to payments of Federal unemployment tax) is amended by striking out the last sentence.

(5) Subsection (i) of section 6601 of the 1986 Code (relating to exception as to Federal unemployment tax) is amended by striking out "or 3321".

45 USC 231n
note.

(6) Subparagraph (A) of section 232(a)(2) of the Railroad Retirement Revenue Act of 1983 is amended by striking out "is attributable to the basic rate under section 3321(c)(1)(A) of the Internal Revenue Code of 1954" and inserting in lieu thereof "is not attributable to the surtax rate under section 516(b) of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988".

26 USC 3321
note.

(7) Subparagraph (B) of section 232(a)(2) of such Act is amended by striking out "section 3321(c)(1)(B) of such Code" and inserting in lieu thereof "section 516(b) of such Act".

(d) **EFFECTIVE DATE.**—The amendments made by this section, and the provisions of subsection (b), shall apply to remuneration paid after December 31, 1988.

45 USC 352 note.

SEC. 7107. GAO STUDY OF FRAUD AND PAYMENT ERRORS.

The Comptroller General shall study the frequency of fraud and payment errors in the railroad unemployment compensation program. Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall report to Congress the results of such study. Such report shall include—

Reports.

(1) estimates of rates and amounts of annual losses due to fraud and overpayment;

(2) comparisons of such rates with the rates of losses in other Federal programs which experience such losses;

(3) recommendations for legislative measures that could be taken to reduce the losses in the railroad unemployment compensation program arising from fraud and payment errors; and

(4) such other matters relating to such fraud and payment errors as the Comptroller General determines are appropriate.

SEC. 7108. ONE-YEAR EXTENSION OF TIME LIMIT FOR FILING REPORT BY COMMISSION ON RAILROAD RETIREMENT REFORM.

Section 9033(f) of the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330-298) is amended by striking "October 1, 1989" and inserting "October 1, 1990".

45 USC 231n
note.

Subtitle B—Benefit and Other Adjustments

SEC. 7201. WAITING PERIOD FOR BENEFITS AND BENEFIT INCREASES.

45 USC 352.

(a) **IN GENERAL.**—Section 2(a) is amended—

(1) by inserting "(1)" after "(a)";

(2) by striking out "Benefits" the first place it appears and all that follows through the end of the first paragraph, and inserting in lieu thereof the following:

"(A)(i) Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of unemployment in excess of 4 during any registration period.

"(ii) No benefits shall be payable for days of unemployment during the first registration period within a benefit year in which the employee has more than 4 days of unemployment.

(iii) In any case in which the Board finds that an employee's employment was due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which such employee was last employed, no benefits shall be payable for the first 14 days of unemployment due to such stoppage of work. However, for subsequent days of unemployment due to such stoppage of work, benefits shall be payable to days in excess of 4 during any registration period.

(B)(i) Except as otherwise provided in this subparagraph, benefits shall be payable to any qualified employee for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness but excluding 4 days of sickness in any registration period.

(ii) No benefits shall be payable for days of sickness in the first registration period within a benefit year in which the employee has less than 4 consecutive days of sickness and more than 4 days of sickness.

(iii) For the purposes of this subparagraph, a period of continuing sickness means (I) a period of consecutive days of sickness, whether from one or more causes, or (II) a period of successive days of sickness due to a single cause without interruption of more than 90 consecutive days which are not days of sickness.”;

(3) by inserting “(2)” at the beginning of the second paragraph;

(4) by striking out “and” after “shall not exceed \$24 per day of such unemployment or sickness” in the second paragraph and inserting in lieu thereof a comma;

(5) by inserting “but before July 1, 1988,” after “June 30, 1976,” in the second paragraph;

(6) by striking out the period at the end of the first sentence of the second paragraph and inserting in lieu thereof “, that for registration periods beginning after June 30, 1988, but before July 1, 1989, such amount shall not exceed \$30 per day of unemployment or sickness, and that for registration periods beginning after June 30, 1989, such amount shall not exceed the maximum daily benefit rate provided in paragraph (3) of this subsection.”;

(7) by inserting after the second paragraph the following new paragraph:

“(3)(A) The maximum daily benefit rate which the Board is required to compute under section 12(r)(2) shall be the amount computed pursuant to the following formula, but shall be not less than 0:

$$BR = 25 \left(1 + \frac{A - 600}{900} \right)$$

“(B) For purposes of such formula—

“(i) ‘BR’ represents the maximum daily benefit rate; and

“(ii) ‘A’ represents the amount obtained by dividing the amount of the ‘applicable base’ with respect to tier 1 taxes as determined under section 3231(e)(2) of the Internal Revenue

Code of 1986 for the calendar year in which the benefit year begins by 60, with this quotient being rounded down to the nearest multiple of \$100.

“(C) If the maximum daily benefit rate computed under such formula is not a multiple of \$1, it shall be rounded to the nearest multiple of \$1, with such rounding being upward in the event the amount computed is equidistant between two multiples of \$1.”; and

45 USC 352 note. (8) by inserting “(4)” at the beginning of the last paragraph.
(b) **EFFECTIVE DATES.**—(1) Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) The amendments made by paragraph (2) of subsection (a) shall apply with respect to registration periods beginning after June 30, 1988.

SEC. 7202. QUALIFYING CONDITION.

45 USC 353. (a) **IN GENERAL.**—Section 3 is amended—

(1) by inserting “with respect to the base year” after “his compensation”; and

(2) by striking “\$1,500 with respect to the base year” and inserting in lieu thereof “2.5 times the monthly compensation base for months in such base year as computed under section 1(i) of this Act”.

45 USC 353 note. (b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 7203. INCREASE IN MAXIMUM PERMITTED SUBSIDIARY REMUNERATION.

45 USC 351. (a) **IN GENERAL.**—The second paragraph of section 1(k) is amended by striking out “\$10” and inserting “\$15” in lieu thereof.

45 USC 351 note. (b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on July 1, 1988.

Subtitle C—Retirement Act Amendments

SEC. 7301. ADDITIONAL LUMP SUM PAYMENT IN CERTAIN CASES.

45 USC 231e. Section 6 of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following new subsection:

“(e)(1) Every individual who will have completed ten years of service at the time of his retirement or death, who will have received compensation in the nature of separation or severance pay on or after January 1, 1985, and who would have been credited with additional months of service pursuant to section 3(i)(4) of this Act except for the fact that such individual was not in an employment relation to one or more employers nor an employee representative in such months, shall, at the time his annuity under section 2(a)(1) of this Act begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If the full amount of a lump sum under this subsection cannot be determined at the time an individual’s annuity under section 2(a)(1) begins to accrue, such lump sum shall be payable at such time thereafter as such amount can be determined. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1), or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual’s widow or

widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

“(2) The lump sum provided under subdivision (l) of this subsection shall be in an amount equal to the product of (A) the compensation attributable to the additional months of service which would have been credited to the individual due to the receipt of payments in the nature of separation or severance pay pursuant to section 3(i)(4) of this Act if such individual had remained in an employment relation to one or more employers or had continued to be an employee representative and (B) the rate of tax, or rates of tax, imposed on the compensation described in clause (A) of this subdivision by section 3201(b) of the Internal Revenue Code of 1986.”.

SEC. 7302. DELETION OF LAST PERSON SERVICE AS A DISQUALIFICATION.

(a) **IN GENERAL.**—Section 2(e) of the Railroad Retirement Act of 1974 is amended—

45 USC 231a.

(1)(A) in subdivision (1), by striking out “any person, whether or not”; and

(B) by striking out “(but with the” and all that follows through “political subdivision of a State”;

(2) in subdivision (2), by striking out “and of the person, or persons, by whom he was last employed”; and

(3) in subdivision (3), by striking out “or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) began to accrue”.

(b) **DEDUCTION FOR WORK.**—Section 2(f) of such Act is amended by adding at the end thereof the following new subdivision:

“(6)(A) Except as provided in subparagraph (B)—

“(i) that portion of the annuity for any month of an individual as is computed under section 3(b) and as adjusted under section 3(g), plus any supplemental amount for such month under section 3(e), and that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d), shall each be subject to a deduction of \$1 for each \$2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) began to accrue; and

“(ii) that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d) shall be subject to a deduction of \$1 for each \$2 of compensation received by such spouse from compensated service rendered in such month to the last person, or persons, by whom such spouse was employed before the date on which the annuity of such spouse under subsection (c)(1) began to accrue.

“(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to annuities payable under the Railroad Retirement Act of 1974 for months beginning after the date of enactment of this Act.

45 USC 231a
note.

SEC. 7303. EARNINGS OF DISABILITY ANNUITANTS.

45 USC 231a. (a) **IN GENERAL.**—Section 2(e)(4) of the Railroad Retirement Act of 1974 is amended—

(1) by striking out “\$200 in earnings” and inserting in lieu thereof “\$400 in earnings (after deduction of disability related work expenses)”;

(2) by striking out “\$2,400” each place it appears and inserting in lieu thereof “\$4,800 (after deduction of disability related work expenses)”;

(3) by striking out “\$200” each place it appears and inserting in lieu thereof “\$400”; and

(4) by striking out “\$100” and inserting in lieu thereof “\$200”.

45 USC 231a
note.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to months in calendar years beginning after December 31, 1988.

SEC. 7304. ALLOWANCE OF CREDIT FOR MILITARY SERVICE.

45 USC 231. (a) **IN GENERAL.**—Section 1(g)(2) of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following:

“For purposes of section 3(i)(2) of this Act, the period beginning on June 15, 1948, and ending on December 15, 1950, shall be deemed to be a war service period with respect to any individual who without intervening employment not covered by this Act rendered service as an employee to an employer under this Act in the year such individual was released from active military service or in the year immediately following such year.”.

45 USC 231 note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply with respect to annuities accruing in months after the date of enactment of this Act.

TITLE VIII—AMENDMENTS RELATING TO SOCIAL SECURITY ACT PROGRAMS

Subtitle A—Old-Age, Survivors, and Disability Insurance and Related Provisions

SEC. 8001. INTERIM DISABILITY BENEFITS IN CASES OF DELAYED FINAL DECISIONS.

(a) **DISABILITY BENEFITS UNDER TITLE II.**—Section 223 of the Social Security Act (42 U.S.C. 423) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

“Interim Benefits in Cases of Delayed Final Decisions

“(h)(1) In any case in which an administrative law judge has determined after a hearing as provided under section 205(b) that an individual is entitled to disability insurance benefits or child’s, widow’s, or widower’s insurance benefits based on disability and the Secretary has not issued his final decision in such case within 110 days after the date of the administrative law judge’s determination, such benefits shall be currently paid for the months during the period beginning with the month preceding the month in which

h 110-day period expires and ending with the month preceding the month in which such final decision is issued.

(2) For purposes of paragraph (1), in determining whether the 110-day period referred to in paragraph (1) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Secretary's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(3) Any benefits currently paid under this title pursuant to this section (for the months described in paragraph (1)) shall not be considered overpayments for any purpose of this title (unless payment of such benefits was fraudulently obtained), and such benefits shall not be treated as past-due benefits for purposes of section 403(b)(1)."

b) **BENEFITS UNDER TITLE XVI.**—Section 1631(a) of such Act (42 U.S.C. 1383(a)) is amended by adding at the end the following new paragraph:

(8)(A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) that an individual is entitled to benefits based on disability or blindness under this title and the Secretary has not issued his final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

Blind persons.

(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Secretary's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(C) Any benefits currently paid under this title pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purposes of this title, unless payment of such benefits was fraudulently obtained."

c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to determinations by administrative law judges of entitlement to benefits made after 180 days after the date of the enactment of this Act.

42 USC 423 note.

C. 8002. APPLICATION OF EARNINGS TEST IN YEAR OF INDIVIDUAL'S DEATH.

a) **YEAR IN WHICH INDIVIDUAL WOULD HAVE ATTAINED RETIREMENT AGE BUT FOR THE INDIVIDUAL'S DEATH IN SUCH YEAR TREATED AS YEAR THROUGHOUT WHICH THE EARNINGS TEST FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE IS APPLICABLE.**—Paragraph 3 of section 203(f) of the Social Security Act (42 U.S.C. 403(f)(3)) is amended by inserting "(or, but for the individual's death, would have attained)" after "who has attained".

b) **ELIMINATION OF THE SHORT TAXABLE YEAR IN THE YEAR OF DEATH FOR PURPOSES OF THE EARNINGS TEST.**—Paragraph (3) of section 203(f) of such Act is further amended—

(1) by inserting after the first sentence the following new sentence: "For purposes of the preceding sentence, notwith-

standing section 211(e), the number of months in the taxable year in which an individual dies shall be 12.”; and

(2) in the last sentence, by striking “preceding sentence” and inserting “first sentence of this paragraph”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to deaths after the date of the enactment of this Act.

42 USC 403 note.

SEC. 8003. PHASEOUT OF REDUCTION IN WINDFALL BENEFITS.

(a) **IN GENERAL.**—Section 215(a)(7)(D) of the Social Security Act (42 U.S.C. 415(a)(7)(D)) is amended—

(1) by striking “more than 25 years of coverage” in the second sentence and inserting “more than 20 years of coverage”; and

(2) by striking “shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be—” and inserting “shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table.”; and

(3) by striking clauses (i) through (iv) and inserting the following table:

“If the number of such individual’s years of coverage (as so defined) is:	The applicable percent is:
29.....	85 percent
28.....	80 percent
27.....	75 percent
26.....	70 percent
25.....	65 percent
24.....	60 percent
23.....	55 percent
22.....	50 percent
21.....	45 percent.”

42 USC 415 note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to benefits payable for months after December 1988.

SEC. 8004. DENIAL OF BENEFITS TO INDIVIDUALS DEPORTED OR ORDERED DEPORTED ON THE BASIS OF ASSOCIATIONS WITH THE NAZI GOVERNMENT OF GERMANY DURING WORLD WAR II.

(a) **IN GENERAL.**—Section 202(n)(1) of the Social Security Act (42 U.S.C. 402(n)(1)) is amended by striking “or (18)” in the matter preceding subparagraph (A) and inserting “(18), or (19)”.

(b) **TIME OF DEPORTATION.**—Section 202(n) of such Act is further amended by adding at the end the following new paragraph:

“(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of deportation has been issued under paragraph (19) of section 241(a) of the Immigration and Nationality Act (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19) as of the date on which such order became final.”.

42 USC 402 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment of this Act, and only to benefits for months beginning (and deaths occurring) on or after such date.

8005. MODIFICATIONS IN THE TERM OF OFFICE OF PUBLIC MEMBERS OF THE BOARD OF TRUSTEES OF THE SOCIAL SECURITY TRUST FUNDS.

a) IN GENERAL.—Sections 201(c), 1817(b), and 1841(b) of the Social Security Act (42 U.S.C. 401(c), 1395i(b), 1395t(b)(i)) are each amended inserting after the first sentence the following: “A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member’s term until the earlier of the time at which the member’s successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member’s term.”.

b) EFFECTIVE DATE.—The amendments made by this section shall apply to members of the Boards of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, of the Federal Hospital Insurance Trust Fund, and of the Federal Supplementary Medical Insurance Trust Fund serving on such Boards of Trustees as members of the public on or after the date of the enactment of this Act.

42 USC 401 note.

8006. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act (42 U.S.C. 402(g)) is amended—

- (1) in paragraph (1)(iii), by striking “June 1989” and inserting “June 1990”; and
- (2) in paragraph (3)(B), by striking “January 1, 1989” and inserting “January 1, 1990”.

8007. EXEMPTION FROM SOCIAL SECURITY FOR EMPLOYERS AND EMPLOYEES WHO ARE BOTH MEMBERS OF CERTAIN RELIGIOUS FAITHS.

a) EXEMPTION FROM COVERAGE UNDER SOCIAL SECURITY.—

(1) **IN GENERAL.**—Subchapter C of chapter 21 of the Internal Revenue Code of 1986 (general provisions under Federal Insurance Contributions Act) is amended by redesignating section 3127 as section 3128, and by inserting after section 3126 the following new section:

3127. EXEMPTION FOR EMPLOYERS AND THEIR EMPLOYEES WHERE BOTH ARE MEMBERS OF RELIGIOUS FAITHS OPPOSED TO PARTICIPATION IN SOCIAL SECURITY ACT PROGRAMS.

(a) IN GENERAL.—Notwithstanding any other provision of this chapter (and under regulations prescribed to carry out this section), in any case where—

- “(1) an employer is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section, and has filed and had approved under subsection (b) an application (in such form and manner, and with such official, as may be prescribed by such regulations) for an exemption from the taxes imposed by section 3111, and
- “(2) an employee of such employer who is also a member of such a religious sect or division and an adherent of its established tenets or teachings has filed and had approved under

subsection (b) an identical application for exemption from the taxes imposed by section 3101, such employer shall be exempt from the taxes imposed by section 3111 with respect to wages paid to each of his employees who meets the requirements of paragraph (2) and each such employee shall be exempt from the taxes imposed by section 3101 with respect to such wages paid to him by such employer.

“(b) APPROVAL OF APPLICATION.—An application for exemption filed by an employer under subsection (a)(1) or by an employee under subsection (a)(2) shall be approved only if—

“(1) such application contains or is accompanied by the evidence described in section 1402(g)(1)(A) and a waiver described in section 1402(g)(1)(B),

“(2) the Secretary of Health and Human Services makes the findings (with respect to such sect or division) described in section 1402(g)(1) (C), (D), and (E), and

“(3) no benefit or other payment referred to in section 1402(g)(1)(B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) to the individual filing the application at or before the time of such filing.

“(c) EFFECTIVE PERIOD OF EXEMPTION.—An exemption granted under this section to any employer with respect to wages paid to any of his employees, or granted to any such employee, shall apply with respect to wages paid by such employer during the period—

“(1) commencing with the first day of the first calendar quarter, after the quarter in which such application is filed, throughout which such employer or employee meets the applicable requirements specified in subsections (a) and (b), and

“(2) ending with the last day of the calendar quarter preceding the first calendar quarter thereafter in which (A) such employer or the employee involved ceases to meet the applicable requirements of subsection (a), or (B) the sect or division thereof of which such employer or employee is a member is found by the Secretary of Health and Human Services to have ceased to meet the requirements of subsection (b)(2).”

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter C of such Code is amended by striking the last item and inserting the following:

“Sec. 3127 Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs.

“Sec. 3128. Short title.”

(b) CONFORMING EXEMPTION FROM ELIGIBILITY FOR BENEFITS.—Section 202(v) of the Social Security Act (42 U.S.C. 402(v)) is amended—

(1) by inserting “(1)” after “(v)”;

(2) by inserting “and subject to paragraph (3),” after “title,”;

(3) by striking “waiver; except that” and all that follows and inserting “waiver.”; and

(4) by adding at the end the following new paragraphs:

“(2) Notwithstanding any other provision of this title, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 3127 of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this title to him, no payments shall be made on his behalf under part A of title XVIII, and no benefits or other

payments under this title shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

“(3) If, after an exemption referred to in paragraph (1) or (2) is granted to an individual, such exemption ceases to be effective, the waiver referred to in such paragraph shall cease to be applicable in the case of benefits and other payments under this title and part A of title XVIII to the extent based on—

“(A) his wages for and after the calendar year following the calendar year in which occurs the failure to meet the requirements of section 1402(g) or 3127 on which the cessation of such exemption is based, and

“(B) his self-employment income for and after the taxable year in which occurs such failure.”.

(c) CONFORMING AMENDMENTS REMOVING TIME LIMITS ON SECA EXEMPTION APPLICATIONS.—Section 1402(g) of the Internal Revenue Code of 1986 is amended—

(1) by striking paragraphs (2) and (4); and

(2) by redesignating paragraphs (3) and (5) as paragraphs (2) and (3), respectively.

(d) EFFECTIVE DATES.—The amendments made by subsection (a) shall apply to wages paid after December 31, 1988. The amendments made by subsection (b) shall apply to benefits paid for (and items and services furnished in) months after December 1988. The amendments made by subsection (c) shall apply to applications for exemptions filed on or after the date of the enactment of this Act.

26 USC 1402
note.

SEC. 8008. BLOOD DONOR LOCATOR SERVICE.

(a) EXPLICIT AUTHORIZATION OF USE OF SOCIAL SECURITY ACCOUNT NUMBER TO ASSIST IN IDENTIFICATION OF BLOOD DONORS.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended—

(1) by redesignating subparagraph (D) as subparagraph (E); and

(2) by inserting after subparagraph (C) the following new subparagraph:

“(D)(i) It is the policy of the United States that—

“(I) any State (or any political subdivision of a State) and any authorized blood donation facility may utilize the social security account numbers issued by the Secretary for the purpose of identifying blood donors, and

“(II) any State (or political subdivision of a State) may require any individual who donates blood within such State (or political subdivision) to furnish to such State (or political subdivision), to any agency thereof having related administrative responsibility, or to any authorized blood donation facility the social security account number (or numbers, if the donor has more than one such number) issued to the donor by the Secretary.

“(ii) If and to the extent that any provision of Federal law enacted before the date of the enactment of this subparagraph is inconsistent with the policy set forth in clause (i), such provision shall, on and after such date, be null, void, and of no effect.

“(iii) For purposes of this subparagraph—

“(I) the term ‘authorized blood donation facility’ means an entity described in section 1141(h)(1)(B), and

“(II) the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the

Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.”.

(b) **ESTABLISHMENT OF BLOOD DONOR LOCATOR SERVICE.**—

(1) **IN GENERAL.**—Part A of title XI of such Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

“**BLOOD DONOR LOCATOR SERVICE**

“**SEC. 1141. (a) IN GENERAL.**—The Secretary shall establish and conduct a Blood Donor Locator Service, under the direction of the Commissioner of Social Security, which shall be used to obtain and transmit to any authorized person (as defined in subsection (h)(1)) the most recent mailing address of any blood donor who, as indicated by the donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, has or may have the virus for acquired immune deficiency syndrome, in order to inform such donor of the possible need for medical care and treatment.

“(b) **PROVISION OF ADDRESS INFORMATION.**—Whenever the Secretary receives a request, filed by an authorized person (as defined in subsection (h)(1)), for the mailing address of a donor described in subsection (a) and the Secretary is reasonably satisfied that the requirements of this section have been met with respect to such request, the Secretary shall promptly undertake to provide the requested address information from—

“(1) the files and records maintained by the Social Security Administration, and

“(2) such files and records obtained pursuant to section 6103(m)(6) of the Internal Revenue Code of 1986 as the Secretary considers necessary to comply with such request.

“(c) **MANNER AND FORM OF REQUESTS.**—A request for address information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe, shall include the blood donor’s social security account number, and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

“(d) **PROCEDURES AND SAFEGUARDS.**—Any authorized person shall, as a condition for receiving address information from the Blood Donor Locator Service—

“(1) establish and maintain, to the satisfaction of the Secretary, a system for standardizing records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of address information made by or to it,

“(2) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such address information and all related blood donor records shall be stored,

“(3) restrict, to the satisfaction of the Secretary, access to the address information and related blood donor records only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this section,

“(4) provide such other safeguards which the Secretary determines (and which the Secretary prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the address information and related blood donor records,

42 USC
1320b-11.

Regulations.

Records.
Classified
information.

"(5) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by the authorized person for ensuring the confidentiality of address information and related blood donor records required under this subsection, and

Reports.

"(6) destroy such address information and related blood donor records, upon completion of their use in providing the notification for which the information was obtained, so as to make such information and records undisclosable.

If the Secretary determines that any authorized person has failed to, or does not, meet the requirements of this subsection, the Secretary may, after any proceedings for review established under subsection (f), take such actions as are necessary to ensure such requirements are met, including refusing to disclose address information to such authorized person until the Secretary determines that such requirements have been or will be met. In the case of any authorized person who discloses any address information received pursuant to this section or any related blood donor records to any agent, this subsection shall apply to such authorized person and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such authorized person). The Secretary shall destroy all related blood donor records in the possession of the Department of Health and Human Services upon completion of their use in transmitting mailing addresses as required under subsection (a), so as to make such records undisclosable.

"(e) **ARRANGEMENTS WITH STATE AGENCIES AND AUTHORIZED PERSONS.**—The Secretary, in carrying out the Secretary's duties and functions under this section, shall enter into arrangements—

"(1) with State agencies to accept and to transmit to the Secretary requests for address information under this section and to accept and to transmit such information to authorized persons, and

"(2) with State agencies and authorized persons otherwise to cooperate with the Secretary in carrying out the purposes of this section.

"(f) **PROCEDURES FOR ADMINISTRATIVE REVIEW.**—The Secretary shall by regulation prescribe procedures which provide for administrative review of any determination that any authorized person has failed to meet the requirements of this section.

Regulations.

"(g) **UNAUTHORIZED DISCLOSURE OF INFORMATION.**—Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of address information or related blood donor records acquired or maintained by or under the Secretary, or pursuant to this section by any authorized person, or of information derived from any such address information or related blood donor records, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such address information or related blood donor record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

“(h) **DEFINITIONS.**—For purposes of this section—

“(1) **AUTHORIZED PERSON.**—The term ‘authorized person’ means—

“(A) any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations, and

“(B) any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which, in accordance with such regulations as may be prescribed by the Secretary, provides for—

“(i) the confidentiality of any address information received pursuant to this section and related blood donor records,

“(ii) blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they have or may have the virus for acquired immune deficiency syndrome, and

“(iii) counseling services for such individuals who have been found to have such virus.

“(2) **RELATED BLOOD DONOR RECORD.**—The term ‘related blood donor record’ means any record, list, or compilation which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to this section.

“(3) **STATE.**—The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.”

(2) **TIME LIMIT FOR ESTABLISHMENT OF BLOOD DONOR LOCATOR SERVICE.**—The Secretary of Health and Human Services shall establish the Blood Donor Locator Service pursuant to section 1141 of the Social Security Act not later than 180 days after the date of the enactment of this Act.

(c) **DISCLOSURE OF TAXPAYER ADDRESSES TO BLOOD DONOR LOCATOR SERVICE.**—

(1) **IN GENERAL.**—Subsection (m) of section 6103 of the Internal Revenue Code of 1986 (relating to disclosure of taxpayer identity information) is amended by adding at the end the following new paragraph:

“(6) **BLOOD DONOR LOCATOR SERVICE.**—

“(A) **IN GENERAL.**—Upon written request pursuant to section 1141 of the Social Security Act, the Secretary shall disclose the mailing address of taxpayers to officers and employees of the Blood Donor Locator Service in the Department of Health and Human Services.

“(B) **RESTRICTION ON DISCLOSURE.**—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, assisting under the Blood Donor Locator Service authorized persons (as defined in section 1141(h)(1) of the Social Security Act) in locating blood donors who, as indicated by donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, have or may have the virus for acquired immune deficiency syndrome,

in order to inform such donors of the possible need for medical care and treatment.

“(C) SAFEGUARDS.—The Secretary shall destroy all related blood donor records (as defined in section 1141(h)(2) of the Social Security Act) in the possession of the Department of the Treasury upon completion of their use in making the disclosure required under subparagraph (A), so as to make such records undisclosable.”.

(2) SAFEGUARDS.—

(A) IN GENERAL.—Paragraph (4) of section 6103(p) of such Code (relating to safeguards) is amended—

(i) in subparagraph (F)—

(I) by striking “manner; and” at the end of clause (i) and inserting “manner,”;

(II) by adding “and” at the end of clause (ii)(III); and

(III) by inserting after clause (ii)(III) the following new clause:

“(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing the notification for which the information was obtained, so as to make such information undisclosable;”;

(ii) in the last sentence, by striking “subsection (m)(2) or (4)” and inserting “subsection (m) (2), (4), or (6)”;

(iii) by adding at the end the following new sentence: “For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term ‘return information’ includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).”.

(B) CONFORMING AMENDMENT.—Paragraph (2) of section 7213(a) of such Code (relating to unauthorized disclosure of returns and return information) is amended by striking “(m) (2) or (4)” and inserting “(m) (2), (4), or (6)”.

8009. REQUIREMENT OF SOCIAL SECURITY ACCOUNT NUMBER AS A CONDITION FOR RECEIPT OF SOCIAL SECURITY BENEFITS.

IN GENERAL.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended—

(1) in subparagraph (B)(i) in the matter preceding subclause (I), by inserting “and subparagraph (E)” after “subparagraph (A)”;

(2) by redesignating subparagraph (E) (as redesignated by section 8008(a)(1)) as subparagraph (F); and

(3) by inserting after subparagraph (D) (as added by section 8008(a)(2)) the following new subparagraph:

(E) The Secretary shall require, as a condition for receipt of benefits under this title, that an individual furnish satisfactory proof of a social security account number assigned to such individual by the Secretary or, in the case of an individual to whom no such number has been assigned, that such individual make proper application for assignment of such a number.”.

EFFECTIVE DATE.—The amendments made by this section shall apply to benefits entitlement to which commences after the sixth month following the month in which this Act is enacted.

SEC. 8010. SUBSTITUTION OF CERTIFICATE OF ELECTION FOR APPLICATION TO ESTABLISH ENTITLEMENT FOR CERTAIN REDUCED WIDOW'S AND WIDOWER'S BENEFITS.

(a) WIDOW'S INSURANCE BENEFITS.—Section 202(e) of the Social Security Act (42 U.S.C. 402(e)) is amended—

(1) by redesignating paragraph (1)(C)(ii) as paragraph (1)(C)(iii);

(2) by striking paragraph (1)(C)(i) and inserting the following:

“(C)(i) has filed application for widow's insurance benefits,

“(ii) was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

“(I) has attained retirement age (as defined in section 216(l)),

“(II) is not entitled to benefits under subsection (a) or section 223, or

“(III) has in effect a certificate (described in paragraph (8)) filed by her with the Secretary, in accordance with regulations prescribed by the Secretary, in which she elects to receive widow's insurance benefits (subject to reduction as provided in subsection (q)), or”; and

(3) by adding at the end the following new paragraph:

“(8) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

“(A) for the month in which it is filed and for any month thereafter, and

“(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which she attains age 62.”.

(b) WIDOWER'S INSURANCE BENEFITS.—Section 202(f) of such Act (42 U.S.C. 402(f)) is amended—

(1) by redesignating paragraph (1)(C)(ii) as paragraph (1)(C)(iii);

(2) by striking paragraph (1)(C)(i) and inserting the following:

“(C)(i) has filed application for widower's insurance benefits,

“(ii) was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

“(I) has attained retirement age (as defined in section 216(l)),

“(II) is not entitled to benefits under subsection (a) or section 223, or

“(III) has in effect a certificate (described in paragraph (8)) filed by him with the Secretary, in accordance with regulations prescribed by the Secretary, in which he elects to receive widower's insurance benefits (subject to reduction as provided in subsection (q)), or”; and

(3) by adding at the end the following new paragraph:

“(8) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

“(A) for the month in which it is filed and for any month thereafter, and

“(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he attains age 62.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to benefits payable under section 202(e) or section 202(f) of the Social Security Act on the basis of the wages and self-employment income of an individual who dies after the month in which this Act is enacted.

42 USC 402 note.

SEC. 8011. CALCULATION OF THE WINDFALL BENEFIT GUARANTEE AMOUNT BASED ON PENSION AMOUNTS PAYABLE IN THE FIRST MONTH OF CONCURRENT ENTITLEMENT RATHER THAN CONCURRENT ELIGIBILITY.

(a) **IN GENERAL.**—Section 215(a)(7) of the Social Security Act (42 U.S.C. 415(a)(7)) is amended—

(1) in subparagraph (A), by striking “with respect to the initial month in which the individual becomes eligible for such benefits”;

(2) in the second sentence of subparagraph (B)(i), by striking “eligibility for old-age or disability insurance benefits” and inserting “concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits”; and

(3) in subparagraph (C), by striking clause (iii) and redesignating clause (iv) as clause (iii).

(b) **CONFORMING AMENDMENT.**—Section 215(d)(5)(ii) of such Act (42 U.S.C. 415(d)(5)(ii)) is amended by striking “his or her eligibility for old-age or disability insurance benefits” and inserting “such concurrent entitlement”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to benefits based on applications filed after the month in which this Act is enacted.

42 USC 415 note.

SEC. 8012. CONSOLIDATION OF REPORTS ON CONTINUING DISABILITY REVIEWS.

(a) **IN GENERAL.**—Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)) is amended by striking “semiannually” and inserting “annually”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to reports required to be submitted after the date of the enactment of this Act.

42 USC 421 note.

SEC. 8013. EXCLUSION OF EMPLOYEES SEPARATED FROM EMPLOYMENT BEFORE JANUARY 1, 1989, FROM RULE INCLUDING AS WAGES TAXABLE UNDER FICA CERTAIN PAYMENTS FOR GROUP-TERM LIFE INSURANCE.

(a) **IN GENERAL.**—Subsection (b) of section 9003 of the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330-287) is amended by striking “December 31, 1987.” and inserting “December 31, 1987, except that such amendments shall not apply with respect to payments by the employer (or a successor of such employer) for group-term life insurance for such employer’s former employees who separated from employment with the employer on or before Decem-

26 USC 3121 note.

ber 31, 1988, to the extent that such payments are not for coverage for any such employee for any period for which such employee is employed by such employer (or a successor of such employer) after the date of such separation.”.

26 USC 3121
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply as if such amendment had been included or reflected in section 9003(b) of the Omnibus Budget Reconciliation Act of 1987 at the time of its enactment.

SEC. 8014. CLARIFICATION OF APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES.

(a) **CLARIFICATION OF TREATMENT OF FOREIGN SERVICE RETIREES.**—Subsections (b)(4)(A)(ii)(II), (c)(2)(A)(ii)(II), (e)(7)(A)(ii)(II), (f)(2)(A)(ii)(II), and (g)(4)(A)(ii)(II) of section 202 of the Social Security Act (42 U.S.C. 402 (b)(4)(A)(ii)(II), (c)(2)(A)(ii)(II), (e)(7)(A)(ii)(II), (f)(2)(A)(ii)(II), (g)(4)(A)(ii)(II)) are each amended by striking “chapter 84 of title 5, United States Code,” and inserting “the Federal Employees’ Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980”.

42 USC 402 note.

(b) **TREATMENT OF EMPLOYEES WHOSE FEDERAL EMPLOYMENT TERMINATED AFTER MAKING AN ELECTION INTO SOCIAL SECURITY COVERAGE BUT BEFORE THE EFFECTIVE DATE OF THE ELECTION.**—Subsections (b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), and (g)(4)(A)(i) of section 202 of the Social Security Act (42 U.S.C. 402 (b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), (g)(4)(A)(i)) shall not apply with respect to monthly periodic benefits of any individual based solely on service which was performed while in the service of the Federal Government if—

(1) such person made, before January 1, 1988, an election pursuant to law to become subject to the Federal Employees’ Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (or such person made such an election on or after January 1, 1988, and before July 1, 1988, pursuant to regulations of the Office of Personnel Management relating to belated elections and correction of administrative errors (5 CFR 846.204) as in effect on the date of the enactment of this Act), and

(2) such service terminated before the date on which such election became effective.

42 USC 402 note.

(c) **EFFECTIVE DATE.**—The preceding provisions of this section (including the amendments made by subsection (a)) shall apply as if they had been included or reflected in the provisions of section 9007 of the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330–289) at the time of its enactment.

SEC. 8015. AMENDMENTS TO RULES GOVERNING SOCIAL SECURITY COVERAGE OF FEDERAL EMPLOYMENT.

(a) **CLARIFICATION OF AUTHORITY TO MAKE DETERMINATIONS CONCERNING THE SOCIAL SECURITY COVERAGE OF FEDERAL EMPLOYEES.**—

(1) **AMENDMENTS TO THE SOCIAL SECURITY ACT.**—Section 205(p)(1) of the Social Security Act (42 U.S.C. 405(p)(1)) is amended—

(A) by striking “whether an individual has performed such service, the periods of such service,” in the first sentence;

(B) by striking “which constitute wages under the provisions of section 209” in the first sentence;

(C) by striking “wages were” in the first sentence and inserting “remuneration was”; and

(D) by adding at the end the following new sentence: “Nothing in this paragraph shall be construed to affect the Secretary’s authority to determine under sections 209 and 210 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.”.

(2) AMENDMENTS TO FICA.—Section 3122 of the Internal Revenue Code of 1986 (relating to Federal service) is amended—

(A) by striking “the determination whether an individual has performed service which constitutes employment as defined in section 3121(b),” in the first sentence;

(B) by striking “which constitutes wages as defined in section 3121(a)” in the first sentence; and

(C) by inserting after the first sentence the following new sentence: “Nothing in this paragraph shall be construed to affect the Secretary’s authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.”.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to determinations relating to service commenced in any position on or after the date of the enactment of this Act.

26 USC 3122
note.

(b) CLARIFICATION OF TREATMENT OF SERVICE COVERED UNDER THE FOREIGN SERVICE PENSION SYSTEM.—

(1) AMENDMENT TO THE SOCIAL SECURITY ACT.—Subparagraph (H) of section 210(a)(5) of the Social Security Act (42 U.S.C. 410(a)(5)(H)) is amended to read as follows:

“(H) service performed by an individual—

“(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees’ Retirement System Act of 1986 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to the Federal Employees’ Retirement System provided in chapter 84 of title 5, United States Code, or

“(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act;”.

(2) AMENDMENT TO FICA.—Subparagraph (H) of section 3121(b)(5) of the Internal Revenue Code of 1986 (relating to employment) is amended to read as follows:

“(H) service performed by an individual—

“(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees’ Retirement System Act of 1986 or section 307 of the Central Intelligence Agency Retirement Act

of 1964 for Certain Employees, to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or

"(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980, to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act;".

26 USC 3121
note.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply as if such amendments had been included or reflected in section 304 of the Federal Employees' Retirement System Act of 1986 (100 Stat. 606) at the time of its enactment.

(c) CONTINUATION OF SOCIAL SECURITY COVERAGE OF FEDERAL SERVICE AFTER ANY INITIAL COVERAGE OF SUCH SERVICE.—

(1) **AMENDMENT TO THE SOCIAL SECURITY ACT.**—Paragraph (5) of section 210(a) of the Social Security Act (42 U.S.C. 410(a)(5)) is amended, in the matter following subparagraph (B)(ii), by inserting after "with respect to" the following: "any such service performed on or after any date on which such individual performs".

(2) **AMENDMENT TO FICA.**—Paragraph (5) of section 3121(b) of the Internal Revenue Code of 1986 (relating to employment) is amended, in the matter following subparagraph (B)(ii), by inserting after "with respect to" the following: "any such service performed on or after any date on which such individual performs".

26 USC 3121
note.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to any individual only upon the performance by such individual of service described in subparagraph (C), (D), (E), (F), (G), or (H) of section 210(a)(5) of the Social Security Act (42 U.S.C. 410(a)(5)) on or after the date of the enactment of this Act.

SEC. 3016. TECHNICAL CORRECTIONS IN OASDI PROVISIONS.

42 USC 405.

(a) **TECHNICAL CORRECTIONS.**—(1) Section 205(c)(2)(C)(iii) of the Social Security Act is amended by striking "the Social Security Act" and inserting "this Act".

42 USC 411.

(2) Section 211(a)(7) of such Act (as amended by section 9023(b)(1) of Public Law 100-203) is amended by inserting "of the Internal Revenue Code of 1986" before the semicolon at the end.

(3)(A) Subsection (d) of section 3121 of the Internal Revenue Code of 1986 (as amended by section 9002(b)(2) of Public Law 99-509) is amended—

(i) by redesignating paragraph (3) as paragraph (4), by striking "; or" at the end of such paragraph and inserting a period, and by moving such paragraph (as so redesignated and amended) to the end of the subsection; and

(ii) by redesignating paragraph (4) as paragraph (3), and by striking the period at the end and inserting "; or".

(B) Section 3306(i) of such Code (as amended by section 9002(b)(2) of Public Law 99-509) is amended by striking "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)" and inserting "paragraph (4) and subparagraphs (B) and (C) of paragraph (3)".

26 USC 3121.

(4) Section 13303(c)(2) of Public Law 99-272 is amended—

(A) by striking "312(b)" and inserting "3121(b)";

(B) by striking "is amended" and inserting ", and paragraph (20) of section 210(a) of the Social Security Act, are each amended"; and 42 USC 410.

(C) by striking "after 'service' " and inserting "before 'performed' ". 26 USC 3121; 42 USC 410.

Section 9006(b)(1) of Public Law 100-203 is amended by striking "1(a)" and inserting "3111". 26 USC 3111.

EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall be effective on the date of enactment of this Act. 26 USC 3111 note.

Any amendment made by this section to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act or the Internal Revenue Code of 1954 as added or amended by a provision of a particular Public Law which is so referred to, shall be effective as though it had been enacted or reflected in the relevant provisions of that Public Law at the time of its enactment.

8017. CERTAIN CASH WAGES PAID TO SEASONAL AGRICULTURAL LABORERS EXCLUDED FROM OASDI COVERAGE.

SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 409 of the Social Security Act is amended to read as follows: 42 USC 409.

"(2) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

"(A) the cash remuneration paid in such year by the employer to the employee for such labor is \$150 or more, or

"(B) the employer's expenditures for agricultural labor in such year equal or exceed \$2,500,

except that subparagraph (B) shall not apply in determining whether remuneration paid to an employee constitutes 'wages' under this section if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year;"

FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) of the 1986 Code (relating to wages) is amended to read as follows:

"(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

"(i) the cash remuneration paid in such year by the employer to the employee for such labor is \$150 or more, or

"(ii) the employer's expenditures for agricultural labor in such year equal or exceed \$2,500,

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes 'wages' under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;"

26 USC 3121
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the amendments made by section 9002 of the Omnibus Budget Reconciliation Act of 1987.

26 USC 3121
note.

SEC. 8018. CERTAIN EMPLOYER PENSION CONTRIBUTIONS NOT INCLUDED IN FICA WAGE BASE.

In the case of any State (within the meaning of section 3121(e)(1) of the Internal Revenue Code of 1986) or political subdivision thereof which received a letter ruling of the Internal Revenue Service issued after December 31, 1983, and before the date of the enactment of this Act maintaining that any amount treated as an employer contribution under section 414(h)(2) of the Internal Revenue Code of 1986 is excluded from the definition of “wages” for purposes of tax liability under section 3121(v)(1)(B) of such Code, such State or political subdivision shall be relieved of any liability for taxes under such section 3121(v)(1)(B) which, in good faith reliance on such letter ruling, were not paid and which would otherwise have been required to be paid (but for this section) on or before the earlier of the date of the enactment of this Act or the date of the receipt of a notice of revocation from the Internal Revenue Service of such letter ruling.

AIDS.

SEC. 8019. REPORTS REGARDING CERTAIN DISABILITY-RELATED BENEFITS.

(a) **ELIGIBILITY FOR BENEFITS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report providing information on—

(1) the number of individuals with the complex related to acquired immune deficiency syndrome (hereinafter in this section referred to as “AIDS-related complex”) who have made application for disability-related benefits under titles II and XVI of the Social Security Act during fiscal years 1988, 1987, and, to the extent feasible, 1986;

(2) the number of such applications approved, denied (by reason of denial), and reversed upon appeal;

(3) the rates of allowance and denial of such applications by State and region, to the extent feasible;

(4) the criteria, guidelines, or other information used to determine eligibility (including copies of the documents setting forth such criteria, guidelines, and information) including information about any changes in criteria that are under consideration;

(5) the total costs of disability-related benefits provided to individuals with AIDS-related complex during fiscal years 1988, 1987, and to the extent feasible, 1986; and

(6) to the extent available, the projected number of such applications that will likely be approved and denied and the estimated costs of such benefits for the next 3 fiscal years.

(b) **COORDINATION OF FEDERAL AND STATE DISABILITY PROGRAMS.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report describing what arrangements, if any, now exist to provide for coordination between the Social Security Administration and State disability agencies with respect to the provision of disability-related benefits under titles II and XVI of the Social Security Act and State disability

insurance programs to individuals with acquired immune deficiency syndrome or AIDS-related complex and to make such individuals applying for any such benefits aware of the full range of Federal and State disability-related benefits for which such individuals may be eligible.

Subtitle B—Public Assistance Provisions

SEC. 8101. EXTENSION OF PROHIBITION AGAINST IMPLEMENTATION OF CERTAIN PROPOSED REGULATIONS.

Section 9118 of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1383c) is amended by striking "October 1, 1988" and inserting "September 30, 1989".

SEC. 8102. REVIEW OF POLICY GOVERNING USE OF AFDC FUNDS TO MEET EMERGENCY NEEDS OF FAMILIES ELIGIBLE FOR AFDC THROUGH EMERGENCY ASSISTANCE OR SPECIAL NEEDS PAYMENTS; REPORT TO CONGRESS.

(a) **REVIEW OF POLICY.**—The Secretary of Health and Human Services shall review the policies in effect, as of the date of the enactment of this section, with respect to the use by States of amounts paid to such States under the program of aid to families with dependent children under part A of title IV of the Social Security Act, in the form of payments of aid to meet special needs or emergency assistance under section 406(e) of such Act to meet emergency needs of families who are eligible for such aid.

(b) **REPORT TO CONGRESS.**—Not later than July 1, 1989, the Secretary of Health and Human Services shall submit to the Congress a report containing recommendations for legislative and regulatory changes designed to—

(1) improve the ability of the program of aid to families with dependent children under part A of title IV of the Social Security Act to respond to emergency needs of families who are eligible for such aid; and

(2) eliminate the use of funds provided to States under such program to pay for the provision of shelter in commercial or similar transient facilities.

SEC. 8103. DISREGARD OF CERTAIN HOUSING ASSISTANCE PAYMENTS IN DETERMINING INCOME AND RESOURCES UNDER SSI PROGRAM.

(a) **INCOME.**—Section 1612(b) of the Social Security Act is amended— 42 USC 1382a.

(1) by striking "and" after the semicolon at the end of paragraph (12);

(2) by striking the period at the end of paragraph (13) and inserting "and"; and

(3) by adding after paragraph (13) the following new paragraph:

"(14) assistance paid, with respect to the dwelling unit occupied by such individual (or such individual and spouse), under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, title V of the Housing Act of 1949, or section 202(h) of the Housing Act of 1959."

(b) **RESOURCES.**—Section 1613(a) of such Act is amended—

42 USC 1382b.

(1) by striking "and" after the semicolon at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by inserting after paragraph (7) the following new paragraph:

"(8) the value of assistance referred to in section 1612(b)(14), paid with respect to the dwelling unit occupied by such individual (or such individual and spouse)."

USC 1382a
ce.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall be effective as though they had been included in section 162 of the Housing and Community Development Act of 1987 at the time of its enactment.

SEC. 8104. FOSTER CARE INDEPENDENT LIVING INITIATIVES.

(a) **EXTENSION OF INDEPENDENT LIVING PROGRAM.**—Section 477 of the Social Security Act (42 U.S.C. 677) is amended—

(1) by striking "1987 and 1988" in subsections (a) and (e)(1) and inserting "1987, 1988, and 1989";

(2) by striking "for fiscal year 1988" and all that follows in subsection (c) and inserting "for the fiscal year 1988 or 1989, such description and assurances must be submitted prior to February 1 of such fiscal year.";

(3) by striking "Not later than March 1, 1988" in subsection (g)(1) and inserting "Not later than the first January 1 following the end of each fiscal year";

(4) by inserting "during such fiscal year" in subsection (g)(1) after "carried out";

(5) by striking "(2) Not later than July 1, 1988," in subsection (g)(2) and inserting the following:

"(2)(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

"(B) Not later than March 1, 1989,"; and

(6) by striking "fiscal year 1987" in subsection (g)(2) and inserting "fiscal years 1987 and 1988".

(b) **PERMISSION TO EXPEND UNOBLIGATED FUNDS APPROPRIATED FOR 1987 IN 1989.**—Subsection (f) of section 477 of such Act (42 U.S.C. 677(f)) is amended by inserting after and below paragraph (3) the following:

"Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1989."

(c) **INCLUSION IN INDEPENDENT LIVING PROGRAM OF NON-AFDC FOSTER CARE CHILDREN.**—Subsection (a) of section 477 of such Act (42 U.S.C. 677(a)) is amended—

(1) by inserting "(1)" before "Payments";

(2) by striking "children" and all that follows through "age 16," and inserting "children described in paragraph (2) who have attained age 16"; and

(3) by adding at the end the following new paragraph:

"(2) A program established and carried out under paragraph (1)—

"(A) shall be designed to assist children with respect to whom foster care maintenance payments are being made by the State under this part, and

"(B) may at the option of the State also include any or all other children in foster care under the responsibility of the State."

INCLUSION IN INDEPENDENT LIVING PROGRAM OF CERTAIN FOSTER CARE CHILDREN.—Paragraph (2) of section 477(a) of the Social Security Act (42 U.S.C. 677(a)(2)) (as added by subsection (a)(2) of this section) is further amended—

- (1) by striking “and” in subparagraph (A);
- (2) by striking the period at the end of subparagraph (B) and inserting “, and”;
- (3) by adding at the end the following new subparagraph:
“(C) may at the option of the State also include any child to whom foster care maintenance payments were previously made by a State under this part and whose payments were discontinued on or after the date such child attained age 16, and any child who previously was in foster care described in subparagraph (B) and for whom such care was discontinued on or after the date such child attained age 16, but such child may not be so included after the end of the 6-month period beginning on the date of discontinuance of such payments or care; and a written transitional independent living plan of the type described in subsection (d)(6) shall be developed for such child as a part of such program.”.

DETERMINATION OF SERVICES NEEDED FOR TRANSITION TO INDEPENDENT LIVING.—Subparagraph (C) of section 475(5) of such Act (42 U.S.C. 675(5)(C)) is amended by inserting “and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living” before the semicolon.

LIMITATION ON USE OF FUNDS.—Paragraph (3) of section 477(e) of such Act (42 U.S.C. 677(e)(3)) is amended by adding at the end the following: “Amounts payable under this section may not be used for the provision of room or board.”.

EFFECTIVE DATES.—(1) The amendments made by subsections (a), (b), and (e) shall take effect on October 1, 1988. 42 USC 677 note.
The amendments made by subsections (c), (d), and (f) shall take effect on the date of the enactment of this Act.

8105. TECHNICAL CORRECTIONS TO FAMILY SUPPORT ACT OF 1988. Effective date.
This section shall be effective on the date of the enactment of the Family Support Act of 1988—

(1) section 401(c)(1) of such Act is amended by inserting “(as amended by paragraph (4)(B) of this subsection)” before “is amended—”; 42 USC 607.

(2) section 401(c)(4)(B) of such Act is amended by striking “(as amended by paragraph (1) of this subsection)”; 42 USC 607.

(3) section 202(b) of such Act is amended by striking paragraph (10); 42 USC 607.

(4) section 111(e)(1) of such Act is amended by striking “before” and inserting in lieu thereof “after”; 42 USC 666.

(5) section 407(b)(1)(B)(iii)(I) of the Social Security Act (as amended by section 202(b)(8)(A) of the Family Support Act of 1988 and redesignated by section 401(b)(1) of that Act) is amended by striking “409(a)(19)(A)” and inserting in lieu thereof “402(a)(19)(A)”; 42 USC 607.

(6) section 469 of the Social Security Act (as added by section 129 of the Family Support Act of 1988) is amended— 42 USC 669.

(A) by striking “of title IV of the Social Security Act”;

and

(B) by striking “of title IV of such Act”; and

42 USC 617. (7) section 418 of the Social Security Act (as added by section 603(a) of the Family Support Act of 1988) is redesignated as section 417.

Subtitle C—National Commission on Children

SEC. 8201. DELAY IN REPORTING DATE FOR NATIONAL COMMISSION ON CHILDREN.

Section 1139 of the Social Security Act (42 U.S.C. 1320b-9) is amended—

- (1) by striking “September 30, 1988” in subsection (d) and inserting “March 31, 1990”;
- (2) by striking “March 31, 1989” in subsection (d) and inserting “September 30, 1990”;
- (3) by striking “March 31, 1989” in subsection (e)(1)(A) and inserting “September 30, 1990”;
- (4) by striking “March 31, 1989” in subsection (e)(4)(B) and inserting “September 30, 1990”; and
- (5) by inserting “for each of fiscal years 1989 and 1990” after “section” in subsection (j).

Subtitle D—Unemployment Compensation

SEC. 8301. SELF-EMPLOYMENT DEMONSTRATION PROJECT.

26 USC 3304 note. Section 9152(g) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) is amended—

- (1) in paragraph (1), by striking “two” in the first sentence and inserting “three”; and
- (2) in paragraph (2), by striking “four” and inserting “six”.

Subtitle E—Medicare and Medicaid

PART I—PROVISIONS RELATING TO PART A OF MEDICARE

SEC. 8401. EXTENSION OF DISPROPORTIONATE SHARE PROVISIONS.

Paragraphs (2)(C)(iv), (3)(C)(ii)(I), (3)(C)(ii)(II), (5)(B)(ii)(I), (5)(B)(ii)(II), and (5)(F)(i) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) are each amended by striking “1990” and inserting “1995”.

SEC. 8402. MAINTENANCE OF BAD DEBT COLLECTION POLICY.

Records.
Claims.
42 USC 1395f note. Effective as of the date of the enactment of the Omnibus Budget Reconciliation Act of 1987, section 4008(c) of such Act is amended by inserting after “reasonable collection effort” the following: “, including criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency”.

SEC. 8403. APPLICATION OF WAGE INDICES IN CASE OF AREAS AFFECTED BY SECTION 4005(A)(1) OF OBRA OF 1987.

(a) COMPUTATION OF INDICES FOR FISCAL YEARS 1990 AND 1991.—Section 1886(d)(8) of the Social Security Act (42 U.S.C. 1395ww(d)(8)) is amended—

- (1) in subparagraph (C)—
(A) by striking “subparagraph (B)” each place it appears and inserting “subparagraphs (B) and (C)”, and
(B) by redesignating such subparagraph as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph:

(i) If the application of subparagraph (B), by treating hospitals located in a rural county or counties as being located in an urban area, reduces the wage index for that urban area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area). If the application of subparagraph (B), by treating the hospitals located in a rural county or counties as not being located in the rural area in a State, reduces the wage index for that rural area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.

Health care facilities.
Rural areas.
Urban areas.

(i) Clause (i) shall only apply to discharges occurring on or after October 1, 1989, and before October 1, 1991.”.

HHS REPORT ON ADJUSTMENT OF HOSPITAL WAGE INDICES FOR FISCAL YEAR 1989.—

(1) The Secretary of Health and Human Services shall report to the Congress, not later than 60 days after the date of the enactment of this Act, on alternative methods for reimbursement under section 1886(d) of the Social Security Act to hospitals located in affected areas described in paragraph (2) for hospital discharges occurring in fiscal year 1989 that would result in aggregate payments under title XVIII of such Act to hospitals in such areas in an amount no less than would have been paid without the enactment of the amendments made by section 4005(a)(1) of the Omnibus Budget Reconciliation Act of 1987. In reporting concerning alternative methods, the Secretary shall consider both legislative and administrative actions that would result in an aggregate increase in payments under such title and legislative and administrative actions that would not result in such an aggregate increase.

(2) An affected area described in this paragraph is an area for which the area wage index for fiscal year 1989 (described in section 1886(d)(3)(E) of the Social Security Act) was reduced below the amount otherwise applicable as a result of the amendments made by section 4005(a)(1) of the Omnibus Budget Reconciliation Act of 1987.

PRO PAC STUDY AND REPORT.—The Prospective Payment Assessment Commission shall study and make a report to Congress in 9 months after the date of the enactment of this Act on the appropriate payment for hospitals affected by subparagraphs (B) and (C) of section 1886(d)(8) of the Social Security Act (as amended by subsection (a) of this section) and the appropriate treatment of wage and wage-related costs of such hospitals in computing area wage indices.

SEC. 8404. DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS.42 USC 1395b-1
note.

(a) **IN GENERAL.**—Section 429(a) of the Medicare Catastrophic Coverage Act of 1988 is amended by striking “up to” each place it appears and inserting “at least”.

42 USC 1395b-1
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in the Medicare Catastrophic Coverage Act of 1988.

42 USC 1395ww
note.**SEC. 8405. ELECTION OF PERSONNEL POLICY FOR PROPAC EMPLOYEES.**

With respect to employees of the Prospective Payment Assessment Commission hired before December 22, 1987, such employees shall have the option to elect within 60 days of the date of enactment of this Act to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987, or under the employees coverage provided under the last sentence of section 1886(e)(6)(D) of the Social Security Act.

PART II—RELATING TO PARTS A AND B OF MEDICARE PROGRAM

42 USC 1395b-1
note.**SEC. 8411. TREATMENT OF CERTAIN NURSING EDUCATION PROGRAMS.****(a) DEMONSTRATION OF JOINT NURSING GRADUATE EDUCATION PROGRAMS.—**

(1) The Secretary of Health and Human Services shall provide for demonstration programs under this subsection in each of 5 hospitals for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

(2) Under each demonstration project, subject to paragraph (4), the reasonable costs incurred by a hospital pursuant to a written agreement with an educational institution for the activities described in paragraph (3) conducted as part of an approved educational program that—

(A) involves a substantial clinical component (as determined by the Secretary), and

(B) leads to a master's or doctoral degree in nursing, shall be allowable as reasonable costs under title XVIII of the Social Security Act and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program).

(3) The activities described in this paragraph are the activities for which the reasonable costs of conducting such activities are allowable under title XVIII of the Social Security Act if conducted under a hospital-operated approved educational program (other than an approved graduate medical education program), but only to the extent such activities are directly related to the operation of the educational program conducted pursuant to the written agreement between the hospital and the educational institution.

(4) The amount paid under a demonstration program under this subsection to a hospital for a cost reporting period may not exceed \$200,000.

(5) The Secretary shall report to Congress, by not later than January 1, 1995, on the demonstration programs conducted

under this subsection and on the supply and characteristics of nurses trained under such programs.

(b) **JOINT UNDERGRADUATE EDUCATION PROGRAM.**—In the case of a hospital which (1) was paid under a waiver under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972, which waiver expired on September 30, 1985, and (2) during its cost reporting period beginning in fiscal year 1985 and for each subsequent cost reporting period, has been and is associated with, and has incurred and incurs substantial costs with respect to, a nursing college with which it has shared and shares common directors, educational activities of the nursing college shall be considered to be educational activities operated directly by such hospital for purposes of title XVIII of the Social Security Act, and shall be allowable as reasonable costs under such title and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), for hospital cost reporting periods beginning in fiscal years 1989, 1990, and 1991.

Health care facilities.

SEC. 8412. ELIMINATION OF WAIVERS OF 50:50 RULE FOR HMO ENROLLMENT.

(a) IN GENERAL.—

(1) Section 1876(f) of the Social Security Act (42 U.S.C. 1395mm(f)), as amended by section 4018(a) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(2) Subsection (c) of section 4018 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall not apply to contracts in effect on the date of the enactment of this Act or extensions (not exceeding 90 days) thereof.

101 Stat.
1330-66.
42 USC 1395mm
note.

SEC. 8413. INCREASE IN AUTHORIZATION FOR THE PATIENT OUTCOME ASSESSMENT RESEARCH PROGRAM.

Section 1875(c)(3) of the Social Security Act (42 U.S.C. 1395ll(c)(3)) is amended to read as follows:

“(3)(A) For purposes of carrying out the research program, there are authorized to be appropriated—

“(i) from the Federal Hospital Insurance Trust Fund two-thirds of the amount specified in subparagraph (B), and

“(ii) from the Federal Supplementary Medical Insurance Trust Fund one-third of the amount specified in subparagraph (B).

“(B) The amount specified in this subparagraph is—

“(i) \$7,500,000 for fiscal year 1988,

“(ii) \$10,000,000 for fiscal year 1989,

“(iii) \$20,000,000 for fiscal year 1990, and

“(iv) \$30,000,000 for fiscal year 1991.”

SEC. 8414. DELAY IN REPORTING DEADLINE FOR THE UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE.

Section 406 of the Medicare Catastrophic Coverage Act of 1988 is amended by striking “date of the enactment of this Act” each place it appears and inserting “effective date of the first Act providing appropriations for the Commission”.

42 USC 1395b
note.

PART III—PROVISIONS RELATING TO PART B OF MEDICARE

SEC. 8421. TRIP FEES FOR CLINICAL LABORATORIES.

42 USC 1395l.

(a) **IN GENERAL.**—Section 1833(h)(3) of the Social Security Act (42 U.S.C. 1395l(h)(3)) is amended by adding at the end the following new sentence: “In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall provide a method for computing the fee based on the number of miles traveled and the personnel costs associated with the collection of each individual sample, but the Secretary shall only be required to apply such method in the case of tests furnished during the period beginning on April 1, 1989, and ending on December 31, 1990, by a laboratory that establishes to the satisfaction of the Secretary (based on data for the 12-month period ending June 30, 1988) that (i) the laboratory is dependent upon payments under this title for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests, (ii) at least 85 percent of its gross revenues for such tests are attributable to tests performed with respect to individuals who are homebound or who are residents in a nursing facility, and (iii) the laboratory provided such tests for residents in nursing facilities representing at least 20 percent of the number of such facilities in the State in which the laboratory is located.”.

42 USC 1395l
note.

(b) **BUDGET NEUTRALITY.**—The Secretary of Health and Human Services shall adjust the fees for transportation and personnel established under section 1833(h)(3)(B) of the Social Security Act for tests not covered under the amendment made by subsection (a) in such manner that the total cost of fees under such section is the same as would have been the case without such amendment.

Reports.

(c) **STUDY.**—The Secretary of Health and Human Services shall study reimbursement for specimen collection and transportation and personnel costs under section 1833(h)(3) of the Social Security Act and shall report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate by May 1, 1989. The study shall—

- (1) survey carrier policies regarding such reimbursement,
- (2) report on concerns expressed by clinical diagnostic laboratories concerning such reimbursement, and

- (3) make recommendations to assure that such reimbursement is reasonable, covers the costs involved, and assures adequate access to clinical laboratory services for nursing facility residents.

SEC. 8422. BUDGET NEUTRALITY ADJUSTMENT FOR CERTIFIED REGISTERED NURSE ANESTHETISTS.

(a) **IN GENERAL.**—Section 1833(l)(3)(B) of the Social Security Act (42 U.S.C. 1395l(l)(3)(B)) is amended by inserting “plus applicable coinsurance” after “would have been paid”.

42 USC 1395l
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall become effective as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 8423. COVERAGE OF PSYCHOLOGISTS' SERVICES WHEN PROVIDED OFF-SITE AS PART OF A TREATMENT PLAN.

(a) **IN GENERAL.**—Section 1861(ii) of the Social Security Act (42 U.S.C. 1395x(ii)) is amended—

(1) by inserting “on-site” before “at a community mental health center”, and

(2) by inserting “, and such services that are necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual,” after “Public Health Service Act”).

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall be effective with respect to services furnished on or after January 1, 1989.

42 USC 1395x
note.

SEC. 8424. NONAPPLICATION OF CERTAIN REQUIREMENTS TO PHYSICAL THERAPISTS.

(a) **IN GENERAL.**—Section 1861(p) of the Social Security Act (42 U.S.C. 1395x(p)) is amended by adding at the end the following new sentence: “Nothing in this subsection shall be construed as requiring, with respect to outpatients who are not entitled to benefits under this title, a physical therapist to provide outpatient physical therapy services only to outpatients who are under the care of a physician or pursuant to a plan of care established by a physician.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall become effective with respect to services provided after December 31, 1988.

42 USC 1395x
note.

SEC. 8425. FUNCTIONS OF PHYSICIAN PAYMENT REVIEW COMMISSION.

(a) **ADDITIONAL FUNCTION.**—Section 1845(b)(2) of the Social Security Act (42 U.S.C. 1395w-1(b)(2)) is amended—

(1) by striking “and” at the end of subparagraph (G),

(2) by striking the period at the end of subparagraph (H) and inserting “; and”, and

(3) by adding at the end the following new subparagraph:

“(I) consider policies for moderating the rate of increase in expenditures under this part and the rate of increase in utilization of services under this part.”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall first apply to recommendations submitted in 1989.

42 USC 1395w-1
note.

SEC. 8426. MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION EXTENDED.

Section 9204(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9339(e) of the Omnibus Budget Reconciliation Act of 1986 and section 4085(c) of the Omnibus Budget Reconciliation Act of 1987, is amended by striking “January 1, 1989” and inserting “January 1, 1990”.

42 USC 1395ww
note.

SEC. 8427. PAYMENT FOR MEDICAL ESCORT OR MEDICAL ATTENDANT ON COMMERCIAL AIRLINER ALLOWED.

(a) **IN GENERAL.**—The Secretary of Health and Human Services shall provide that in cases where (as of the date of the enactment of this Act) transportation on a commercial airliner is covered under

42 USC 1395x
note.

section 1861(s)(7) of the Social Security Act, the Secretary shall also provide for payment for medically necessary services of a medical escort or medical attendant.

(b) **EFFECTIVE PERIOD.**—Subsection (a) shall apply to payment for services furnished during the 5-year period beginning on July 1, 1989.

PART IV—PROVISIONS RELATING TO MEDICAID

State and local governments.

SEC. 8431. DELAY IN ISSUANCE OF FINAL REGULATIONS CONCERNING THE USE OF VOLUNTARY CONTRIBUTIONS AND PROVIDER-PAID TAXES BY STATES TO RECEIVE FEDERAL MATCHING FUNDS.

The Secretary of Health and Human Services shall not issue any final regulation prior to May 1, 1989, changing the treatment of voluntary contributions or provider-paid taxes utilized by States to receive Federal matching funds under title XIX of the Social Security Act.

SEC. 8432. MEDICAID LONG-TERM CARE WAIVER PROGRAM.

(a) **MODIFICATION OF FORMULA.**—Section 1915(d)(5)(B) of the Social Security Act (42 U.S.C. 1396n(d)(5)(B)) is amended by adding at the end the following new clause:

“(iv) If there is enacted after December 22, 1987, an Act which amends this title and which results in an increase in the aggregate amount of medical assistance under this title for nursing facility services and home and community-based services for individuals who have attained the age of 65 years, the Secretary, at the request of a State with a waiver under this subsection for a waiver year or years and in close consultation with the State, shall adjust the projected amount computed under this subparagraph for the waiver year or years to take into account such increase.”.

(b) **TECHNICAL MODIFICATIONS.**—Clauses (i) and (ii) of section 1915(d)(5)(B) of such Act (42 U.S.C. 1396n(d)(5)(B)) are amended—

- (1) by inserting “(rounded to the nearest quarter of a year)” after “the number of years” each place it appears,
- (2) by striking “before the waiver year” each place it appears and inserting “at the end of the waiver year”,
- (3) by striking “between the base year and the waiver year” each place it appears and inserting “between the beginning of the base year and the beginning of the waiver year”, and
- (4) by inserting “(rounded to the nearest quarter of a year)” after “for each year” each place it appears.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to waiver years beginning during or after fiscal year 1989.

SEC. 8433. EXTENSION OF TIME PERIOD FOR SUBMISSION OF CORRECTION AND REDUCTION PLANS FOR CERTAIN INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

(a) **IN GENERAL.**—Section 1922 of the Social Security Act (42 U.S.C. 1396r-3) is amended—

- (1) in subsection (a), by striking “residents” and inserting “residents (including failure to provide active treatment)”;
- (2) in subsection (c)(5), by inserting “, and to provide active treatment for,” after “health and safety of”; and

42 USC 1396n note.

(3) in subsection (f), by striking "within 3 years after the effective date of final regulations implementing this section" and inserting "by January 1, 1990".

EFFECTIVE DATE.—The amendments made by subsection (a) become effective on the date of the enactment of this Act, and apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of the enactment of this Act.

42 USC 1396r-3.

8434. CORRECTION RELATING TO MEDICARE BUY-IN.

IN GENERAL.—Section 1905(p)(1) of the Social Security Act (42 U.S.C. 1396d(p)(1)) is amended by striking subparagraph (B) and designating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

CONFORMING AMENDMENTS.—

(1) Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in the subdivision (VIII) following subparagraph (E), by inserting "who is only entitled to medical assistance because the individual is such a beneficiary" after "1905(p)(1)".

(2) Section 1902(m)(4)(A) of such Act (42 U.S.C. 1396a(m)(4)(A)) is amended by striking "1905(p)(1)(C)" and inserting "1905(p)(1)(B)".

(3) Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before clause (i), by striking "in the case of a qualified medicare beneficiary" and inserting "in the case of a qualified medicare cost-sharing with respect to a qualified medicare beneficiary".

(4) Section 1905(p)(2)(A) of such Act (42 U.S.C. 1396d(p)(2)(A)), as amended by section 608(d)(14) of the Family Support Act of 1988, is amended by striking "(1)(C)" and inserting "(1)(B)".

EFFECTIVE DATE.—The amendment made by this section shall be effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988.

42 USC 1396a
note.

8435. CLARIFICATION OF FEDERAL FINANCIAL PARTICIPATION FOR CASE-MANAGEMENT SERVICES.

The Secretary of Health and Human Services may not fail or refuse to approve an amendment to a State plan under title XIX of the Social Security Act that provides for coverage of case-management services described in section 1915(g)(2) of such Act, or to deny payment to a State for such services under section 1903(a)(1) of such Act on the basis that a State is required to provide such services under State law or on the basis that the State had paid or is paying for such services from non-Federal funds before or after April 7, 1988. Nothing in this section shall be construed as requiring the Secretary to make payment to a State under section 1903(a)(1) of such Act for such case-management services which are provided without charge to the users of such services.

State and local
governments.
42 USC 1396a
note.

8436. DETERMINATION OF PREMIUM AMOUNTS FOR EXTENDED MEDICAL ASSISTANCE.

TAKING INTO ACCOUNT CHILD CARE COSTS.—Section 1902(d)(5)(C) of the Social Security Act, as inserted by section 1902(d)(1) of the Family Support Act of 1988, is amended by inserting "the average monthly costs for such child care as is necessary for the employment of the caretaker relative)" after "gross monthly earnings".

42 USC 1396r-6.

42 USC 1396r-6
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective as if included in the enactment of the Family Support Act of 1988.

SEC. 8437. CLARIFICATION OF WAIVER FOR HOME AND COMMUNITY-BASED SERVICES FOR INDIVIDUALS WHO WOULD OTHERWISE REQUIRE HOSPITAL OR FACILITY CARE.

(a) **IN GENERAL.**—Section 1915(c)(7)(A) of the Social Security Act (42 U.S.C. 1396n(c)(7)(A)) is amended—

(1) by striking “who are inpatients in hospitals,” and inserting “who are inpatients in, or who would require the level of care provided in, hospitals,”; and

(2) by striking “who are inpatients of those respective facilities.” and inserting “who are inpatients in, or who would require the level of care provided in, those respective facilities.”.

42 USC 1396n
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to waiver applications submitted before, on, or after the date of the enactment of this Act.

TITLE IX—TRADE PROVISIONS

SEC. 9001. TRADE TECHNICAL AMENDMENTS.

(a) **IN GENERAL.**—

(1) Section 121 of the Trade Act of 1974 (19 U.S.C. 2131) is amended by striking out “(d) There are” and inserting in lieu thereof “There are”.

(2)(A) Paragraph (6) of section 203(e) of the Trade Act of 1974 (19 U.S.C. 2253(e)) is amended—

(i) by striking out “(A) the application” in subparagraph (B) and inserting in lieu thereof “(i) the application”, and

(ii) by striking out “(B) the designation” in subparagraph (B) and inserting in lieu thereof “(ii) the designation”.

(B) Paragraph (2) of section 1214(j) of the Omnibus Trade and Competitiveness Act of 1988 is amended—

(i) by striking out “Section 203(f)” and inserting in lieu thereof “Paragraph (6) of section 203(e)”,

(ii) by striking out “in paragraph (1)” and inserting in lieu thereof “in subparagraph (A)(i)”, and

(iii) by striking out “in paragraph (3)” and inserting in lieu thereof “in subparagraph (B)(i)”.

(3) Section 1215 of the Omnibus Trade and Competitiveness Act of 1988 is amended by striking out “1212(j)(1)” and inserting in lieu thereof “1214(j)(1)”.

(4) Section 771B of the Tariff Act of 1930 is amended to read as follows:

“SEC. 771B. CALCULATION OF SUBSIDIES ON CERTAIN PROCESSED AGRICULTURAL PRODUCTS.

“In the case of an agricultural product processed from a raw agricultural product in which—

“(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

“(2) the processing operation adds only limited value to the raw commodity,

19 USC 2253.

19 USC 2138.

19 USC 1677-2.

ies found to be provided to either producers or processors of product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.”.

(5) Paragraph (19) of section 771 of the Tariff Act of 1930 (19 U.S.C. 1677), as added by section 1335 of the Omnibus Trade and Competitiveness Act of 1988, is redesignated as paragraph (20).

(6) Subsection (e) of section 1337 of the Omnibus Trade and Competitiveness Act of 1988 is amended by striking out “321(b)” and inserting in lieu thereof “1322”.

19 USC 1671
note.

(7) Paragraph (6) of section 1342(a) of the Omnibus Trade and Competitiveness Act of 1988 is amended by striking out “by paragraph (5)(B)” and inserting in lieu thereof “by paragraph (A)”.

19 USC 1337.

(8) Section 204 of the Trade Act of 1974 is amended by designating subsections (d) and (e) as subsections (c) and (d), respectively.

19 USC 2254.

(9) Subsection (d) of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671) is amended by redesignating the subsection (d) relating to a cross reference as subsection (f).

(10) Subsection (a) of section 162 of the Trade Act of 1974 (19 U.S.C. 2212(a)) is amended—

(A) by striking out “chapter 1 or”, and

(B) by inserting “or under section 1102 of the Omnibus Trade and Competitiveness Act of 1988” after “or 124”.

(11) Item 735.24 of the Tariff Schedules of the United States is amended by striking out “5.52% ad val.” and inserting in lieu thereof “4.64% ad val.”.

(12) Subparagraph (B) of section 337(n)(2) of the Tariff Act of 1930 (19 U.S.C. 1337(n)(2)(B)) is amended by striking out “under subsection (h)” and inserting in lieu thereof “under subsection (g)”.

(13) Subsection (g) of section 1214 of the Omnibus Trade and Competitiveness Act of 1988 is amended to read as follows:

19 USC 58c.

COBRA or 1985.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended—

“(1) by striking out ‘schedule 8 of the Tariff Schedules of the United States except item 806.30 or 807.00’ in subsection (a)(9)(A) and inserting in lieu thereof ‘chapter 98 of the Harmonized Tariff Schedule of the United States, except subheading 9802.00.60 or 9802.00.80’;

“(2) by striking out ‘General Headnote 3(e) (vi) or (vii)’ in subsection (a)(9)(C) and inserting in lieu thereof ‘general note 3(v)’;

“(3) by striking out ‘Schedules’ in subsection (a)(9)(C) and inserting in lieu thereof ‘Schedule’;

“(4) by striking out ‘item 806.30’ wherever it appears in subsection (b)(8)(A) and inserting in lieu thereof ‘subparagraph 802.00.60’;

“(5) by striking out ‘item 807.00’ wherever it appears in subsection (b)(8)(A) and inserting in lieu thereof ‘subparagraph 802.00.80’; and

“(6) by striking out ‘headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States’ in subsection (c)(3) and inserting in lieu thereof ‘general note 2 of the Harmonized Tariff Schedule of the United States’.”.

- 19 USC 2703. (14) Subparagraph (D) of section 1214(q)(2) of the Omnibus Trade and Competitiveness Act of 1988 is amended—
 (A) by striking out “TSUS” in clause (iv) and inserting in lieu thereof “TSUS;”,
 (B) by striking out “HTS” in clause (iv) and inserting in lieu thereof “HTS; and”, and
 (C) by striking out “subparagraph (E)” in clause (vi) and inserting in lieu thereof “subparagraph (D)”.
- (15) Section 330(c)(3)(A)(i) of the Tariff Act of 1930 (19 U.S.C. 1330(c)(3)(A)(i)) is amended by striking out “most recently appointed to” and inserting in lieu thereof “with the shortest period of service on”.
- (16) Subsection (g) of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332(g)) is amended by striking out “report to Congress. on the first” and inserting in lieu thereof “report to Congress on the first”.
- Ante*, p. 1138. (17) Subsection (i) of section 1121 of the Omnibus Trade and Competitiveness Act of 1988 is amended by striking out “subsection (c) apply” and inserting in lieu thereof “subsection (f) apply”.
- 19 USC 1507 note. (18) Subsection (b) of section 1902 of the Omnibus Trade and Competitiveness Act of 1988 (102 Stat. 1313) is amended by striking out “1987” and inserting in lieu thereof “1988”.
- (19) Item 909.35 of the Appendix to the Tariff Schedules of the United States is amended by striking out “3.6% ad val. (I)”.
- (20) Subparagraph (B) of section 236(a)(6) of the Trade Act of 1974 (19 U.S.C. 2296(a)(6)(B)) is amended by striking out “in subparagraph (A) or (B) of paragraph (1)” and inserting in lieu thereof “in clause (i) or (ii) of subparagraph (A)”.
- 19 USC 2397 note. (21) Subsection (g) of section 1430 of the Omnibus Trade and Competitiveness Act of 1988 (102 Stat. 1257) is amended by striking out “apply to with” and inserting in lieu thereof “apply with”.
- 19 USC 58c note. (b) **EFFECTIVE DATE.**—The amendments made by this section shall be applied as if such amendments took effect on August 23, 1988.

SEC. 9002. FOREIGN TRADE ZONES.

Section 3 of the Act of June 18, 1934 (48 Stat. 999, chapter 590; 19 U.S.C. 81c) is amended by adding at the end thereof the following new subsection:

Petroleum and petroleum products.

“(d) In regard to the calculation of relative values in the operations of petroleum refineries in a foreign trade zone, the time of separation is defined as the entire manufacturing period. The price of products required for computing relative values shall be the average per unit value of each product for the manufacturing period. Definition and attribution of products to feedstocks for petroleum manufacturing may be either in accordance with Industry Standards of Potential Production on a Practical Operating Basis as verified and adopted by the Secretary of the Treasury (known as producibility) or such other inventory control method as approved by the Secretary of the Treasury that protects the revenue.”.

SEC. 9003. REPORT ON SMALL BUSINESS INNOVATION RESEARCH PROGRAM.

Section 6 of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638, note) is amended—

(1) by striking out the last sentence of subsection (a), as added by section 8008 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418), and

(2) by adding at the end thereof the following new subsection:

(b) Not later than July 1, 1989, the Comptroller General shall submit to the appropriate committees of the House of Representatives and the Senate recommendations as to the advisability of ending the Small Business Innovation Research program to—

“(1) increase each agency’s share of research and development expenditures devoted to it by 0.25 percent per year, until it is 3 percent of the total extramural research and development funds, and targeting a portion of the increment at products with commercialization or export potential;

“(2) make the Small Business Innovation Research program permanent with a formal congressional review every 10 years, beginning in 1993;

“(3) allocate a modest but appropriate share of each agency’s Small Business Innovation Research fund for administrative purposes for effective management, quality maintenance, and the elimination of program delays; and

“(4) include within the Small Business Innovation and Research program all agencies expending between \$20,000,000 and \$100,000,000 in extramural research and development funds annually.”.

Small business.

Research and
development.
Exports.

9004. EXTENSION OF CERTAIN EXISTING SUSPENSIONS OF DUTY AND DUTY REDUCTIONS.

EXTENSIONS UNTIL JANUARY 1, 1993.—Each of the following of the Appendix to the Tariff Schedules of the United States amended by striking out the date in the effective date column inserting in lieu thereof “12/31/92”:

(1) Item 903.29 (relating to fresh, chilled, or frozen brussels sprouts).

(2) Item 906.30 (relating to 3,5,6-trichlorosalicylic acid).

(3) Item 906.32 (m-Aminophenol).

(4) Item 906.38 (p-acetaminobenzenesulfonyl chloride).

(5) Item 906.51 (carboxylic acid disolvate).

(6) Item 906.53 (relating to dicyclomine hydrochloride and nepenzolate bromide).

(7) Item 906.54 (relating to desipramine hydrochloride).

(8) Item 906.99 (relating to rifampin).

(9) Item 907.03 (relating to m-xylenediamine).

(10) Item 907.04 (relating to 1,3-bis(aminomethyl)cyclohexane).

(11) Item 907.06 (relating to 4,4’bis(a,a-dimethylbenzyl) diphenylamine).

(12) Item 907.08 (relating to 4-chloro-3-methylphenol).

(13) Item 907.16 (relating to uncompounded allyl resins).

(14) Item 907.18 (relating to certain forms of amiodarone).

(15) Item 907.25 (relating to terfenadine).

(16) Item 907.42 (relating to clomiphene citrate).

(17) Item 907.51 (relating to certain yttrium materials and compounds).

(18) Item 907.65 (relating to tartaric acid).

(19) Item 907.66 (relating to potassium salts: Antimony tartrate).

(20) Item 907.68 (relating to cream of tartar).

- (21) Item 907.69 (relating to sodium tartrate).
 - (22) Item 907.76 (relating to lactulose).
 - (23) Item 910.00 (relating to diamond tool and drill blanks).
 - (24) Item 911.50 (relating to unwrought lead).
 - (25) Item 912.13 (relating to certain power-driven flat knitting machines and parts thereof).
- (b) OTHER EXTENSIONS.—

(1) Item 907.00 (relating to p-hydroxybenzoic acid) is amended by striking out “9/30/85” and inserting in lieu thereof “12/31/88”.

(2) Item 907.22 (relating to caffeine) is amended by striking out “On or before 12/31/87” and inserting in lieu thereof “On or before the earlier of 12/31/92 or the date on which the rate of duty imposed by the European Communities on articles described in item 437.02 exceeds the rate of duty imposed by the United States on such articles that was in effect on 6/30/88”

Manassas
National
Battlefield Park
Amendments of
1988.
Virginia.
Conservation.
16 USC 429b
note.

TITLE X—MANASSAS NATIONAL BATTLEFIELD PARK

SEC. 10001. SHORT TITLE.

This title may be cited as the “Manassas National Battlefield Park Amendments of 1988”.

SEC. 10002. ADDITION TO MANASSAS NATIONAL BATTLEFIELD PARK.

The first section of the Act entitled “An act to preserve within Manassas National Battlefield Park, Virginia, the most important historic properties relating to the battle of Manassas, and for other purposes”, approved April 17, 1954 (16 U.S.C. 429b), is amended—

(1) by inserting “(a)” after “That”; and

(2) by adding at the end thereof the following:

“(b)(1) In addition to subsection (a), the boundaries of the park shall include the area, comprising approximately 600 acres, which is south of U.S. Route 29, north of Interstate Route 66, east of Route 705, and west of Route 622. Such area shall hereafter in this Act be referred to as the ‘Addition’.

“(2)(A) Notwithstanding any other provision of law, effective on the date of enactment of the Manassas National Battlefield Park Amendments of 1988, there is hereby vested in the United States all right, title, and interest in and to, and the right to immediate possession of, all the real property within the Addition.

“(B) The United States shall pay just compensation to the owners of any property taken pursuant to this paragraph and the full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to the taking of such property. Payment shall be in the amount of the agreed negotiated value of such property or the valuation of such property awarded by judgment and shall be made from the permanent judgment appropriation established pursuant to 31 U.S.C. 1304. Such payment shall include interest on the value of such property which shall be compounded quarterly and computed at the rate applicable for the period involved, as determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities from the date of enactment of the Manassas

Real property.

Battlefield Park Amendments of 1988 to the last day of the preceding the date on which payment is made.

in the absence of a negotiated settlement, or an action by the within 1 year after the date of enactment of the Manassas Battlefield Park Amendments of 1988, the Secretary may a proceeding at anytime seeking in a court of competent tion a determination of just compensation with respect to the of such property.

not later than 6 months after the date of enactment of the s National Battlefield Park Amendments of 1988, the Sec- shall publish in the Federal Register a detailed description depicting the boundaries of the Addition. The map shall be and available for public inspection in the offices of the Park Service, Department of the Interior.

ne Secretary shall not allow any unauthorized use of the after the enactment of the Manassas National Battlefield amendments of 1988, except that the Secretary may permit rly termination of all operations on the Addition and the of equipment, facilities, and personal property from the .”.

Federal
Register,
publication.

Public
information.

3. VISUAL PROTECTION.

n 2(a) of the Act entitled “An Act to preserve within Manas- sonal Battlefield Park, Virginia, the most important historic s relating to the battle of Manassas, and for other pur- approved April 17, 1954 (16 U.S.C. 429b-1), is amended— by inserting “(1)” after “(a)”; and

by adding at the end thereof the following:

he Secretary shall cooperate with the Commonwealth of , the political subdivisions thereof, and other parties as ed by the Commonwealth or its political subdivisions in promote and achieve scenic preservation of views from ne park through zoning and such other means as the parties ne feasible.”.

4. HIGHWAY RELOCATION.

UDY.—The Secretary of the Interior (hereafter in this section to as the “Secretary”), in consultation and consensus with monwealth of Virginia, the Federal Highway Administra- d Prince William County, shall conduct a study regarding cation of highways (known as routes 29 and 234) in, and in ity of, the Manassas National Battlefield Park (hereinafter ection referred to as the “park”). The study shall include an ent of the available alternatives, together with cost esti- and recommendations regarding preferred options. The study cifically consider and develop plans for the closing of those ghways (known as routes 29 and 234) that transect the park l include analysis of the timing and method of such closures eans to provide alternative routes for traffic now ing the park. The Secretary shall provide for extensive vvement in the preparation of the study.

TERMINATION.—Within 1 year after the enactment of this Secretary shall complete the study under subsection (a). ly shall determine when and how the highways (known as 9 and 234) should be closed.

SISTANCE.—The Secretary shall provide funds to the appro- onstruction agency for the construction and improvement of

16 USC 429b
note.

State and local
governments.

the highways to be used for the rerouting of traffic now utilizing highways (known as routes 29 and 234) to be closed pursuant to subsection (b) if the construction and improvement of such alternatives are deemed by the Secretary to be in the interest of protecting the integrity of the park. Not more than 75 percent of the costs of such construction and improvement shall be provided by the Secretary and at least 25 percent shall be provided by State or local governments from any source other than Federal funds. Such construction and improvement shall be approved by the Secretary of Transportation.

(d) **AUTHORIZATION.**—There is authorized to be appropriated to the Secretary not to exceed \$30,000,000 to prepare the study required by subsection (a) and to provide the funding described in subsection (c).

Approved November 10, 1988.

LEGISLATIVE HISTORY—H.R. 4333 (S. 2238):

HOUSE REPORTS: No. 100-795 (Comm. on Ways and Means) and No. 100-1104 (Comm. of Conference).

SENATE REPORTS: No. 100-445 accompanying S. 2238 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 134 (1988):

Aug. 4, considered and passed House.
Oct. 6, 7, S. 2238 considered in Senate.
Oct. 11, H.R. 4333 considered and passed Senate, amended.
Oct. 21, House and Senate agreed to conference report.

Public Law 100-648
100th Congress

An Act

To amend section 3 of the Act of June 14, 1926, as amended (43 U.S.C. 869-2), to authorize the issuance of patents with a limited reverter provision of lands devoted to solid waste disposal, and for other purposes.

Nov. 10, 1988

[H.R. 4362]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This Act may be cited as the “Recreation and Public Purposes Amendment Act of 1988”.

SEC. 2 AMENDMENT.—Section 3 of the Act of June 14, 1926, as amended (43 U.S.C. 869-2) is redesignated as subsection 3(a) and the following new subsections are added at the end thereof:

“(b) NEW DISPOSAL SITES.—(1) Notwithstanding the provisions of subsection (a) of this section, if the Secretary receives an application for conveyance of land under this Act for the express purpose of solid waste disposal or for another purpose which the Secretary finds may include the disposal, placement, or release of any hazardous substance, the Secretary may convey such land subject only to the provisions of this subsection.

“(2) Prior to issuance of any conveyance of land under this subsection the Secretary shall investigate the land covered by an application for such conveyance to determine whether or not any hazardous substance is present on such land. Such investigation shall include a review of any available records as to the use of such land and all appropriate analysis of the soil, water and air associated with such land. No land shall be conveyed under this subsection if such investigation indicates that any hazardous substance is present on such land.

“(3) No application for conveyance under this subsection shall be acted on by the Secretary until the applicant has furnished evidence, satisfactory to the Secretary, that a copy of the application and information concerning the proposed use of the land covered by the application has been provided to the Environmental Protection Agency and to all other State and Federal agencies with responsibility for enforcement of State and Federal laws applicable to lands used for the disposal, placement, or release of solid waste or any hazardous substance.

“(4) No application for conveyance under this subsection shall be acted on by the Secretary until the applicant has given a warranty that use of the land covered by the application will be consistent with all applicable State and Federal laws, including laws dealing with the disposal, placement, or release of hazardous substances, and that the applicant will hold the United States harmless from any liability that may arise out of any violation of any such law.

“(5) A conveyance under this subsection shall be made to the extent that the applicant has demonstrated to the Secretary that the land covered by an application meets all applicable State and local requirements and is appropriate in character and reasonable in acreage in order to meet an existing or reasonably anticipated

Recreation and
Public Purposes
Amendment Act
of 1988.
Hazardous
materials.
43 USC 869 note.

need for solid waste disposal or for another proposed use that the Secretary finds may include the disposal, placement, or release of any hazardous substance.

"(6) A conveyance under this subsection shall be subject to the following conditions:

"(A) Except as otherwise provided in subparagraphs (B) and (D) of this paragraph, the document of conveyance shall provide that the lands conveyed under this subsection shall revert to the United States, unless substantially all of the lands have been used, on or before the date five years after the date of conveyance, for the purpose or purposes specified in the application, or for other use or uses authorized under section 3(a) with the consent of the Secretary.

"(B) In the event that at any time after such conveyance any portion of such lands has not been used for the purpose or purposes specified in the application, and the party to whom such lands were conveyed by the Secretary shall transfer ownership of such unused portion to any other party, the party to whom such lands were conveyed by the Secretary shall be liable to pay the Secretary, on behalf of the United States, the fair market value of such transferred portion as of the date of such transfer, including the value of any improvements thereon. Subject to appropriations, all amounts received by the Secretary under this subparagraph shall be retained by the Secretary and used for the management of public lands and shall remain available until expended.

"(C) Pricing for conveyances of land under this subsection shall be in accordance with the provisions of section 2 of this Act, except that no compensation shall be required for the inclusion of only the limited reverter specified in this paragraph.

"(D) Each patent issued under this subsection shall specify that no portion of the lands covered by such patent shall under any circumstances revert to the United States if such portion has been used for solid waste disposal or for any other purpose that the Secretary finds may result in the disposal, placement, or release of any hazardous substance.

"(7) For purposes of this section the term 'hazardous substance' has the same meaning as such term has when used in the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.).

"(c) EXISTING DISPOSAL SITES.—(1) Upon the application or with the concurrence of any party to whom the Secretary, prior to the date of enactment of this subsection, conveyed land under this Act, the Secretary may renounce the reversionary interests of the United States in such land, or portion thereof, if the Secretary finds that such land, or portion thereof, has been used for solid waste disposal or for any other purpose which the Secretary finds may result in the disposal, placement, or release of any hazardous substance, and the Secretary may rescind any portion of any patent or other instrument of conveyance inconsistent with such renunciation. After such renunciation, affected lands shall not under any circumstances revert to the United States by the operation of law, and shall cease to be subject to the provisions of subsection (a) of this section.

"(2) Upon the application or with the concurrence of a party to whom the Secretary, prior to the date of enactment of this subsection, leased lands pursuant to this Act, the Secretary may convey in

the lands covered by such lease or any portion thereof which been used for solid waste disposal or for any other purpose that Secretary finds may result in the disposal, placement, or release of any hazardous substance. Notwithstanding any other provision of this Act, a patent issued pursuant to this paragraph shall not cause the lands covered by such patent to revert to the United States by operation of law after the issuance of such patent and shall not be subject to the provisions of subsection (a) of this section.”.

C. 3. SAVINGS CLAUSE.—Nothing in this Act or the amendments made by this Act shall be construed to affect the applicability and operation of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) as amended, and the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), as amended.

C. 4. CONGRESSIONAL REVIEW.—(a) The Secretary shall not make any conveyance of land or renunciation of reversionary interests under this Act until he has published in the Federal Register regulations implementing this Act and until sixty days (not counting the days on which the House of Representatives or the Senate has acted for more than three days) after these regulations have been submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

During the first three years after enactment of this Act the Secretary shall not make any conveyance of land or renunciation of reversionary interests under this Act until thirty days (not counting the days on which the House of Representatives or the Senate has acted for more than three days) after notice of intention to do so has been submitted to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

Approved November 10, 1988.

43 USC 869-2
note.

43 USC 869-2
note.
Federal
Register,
publication.
Regulations.

LEGISLATIVE HISTORY—H.R. 4362:

HOUSE REPORTS: No. 100-934 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 20, considered and passed House.

Oct. 21, considered and passed Senate, amended. House concurred in Senate amendment.

Public Law 100-649
100th Congress

An Act

Nov. 10, 1988

[H.R. 4445]

To amend title 18, United States Code, to prohibit certain firearms especially useful to terrorists.

Undetectable
Firearms Act of
1988.

Business and
industry.
Imports.

Commerce and
trade.

Exports.
18 USC 921 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Undetectable Firearms Act of 1988".

SEC. 2. UNDETECTABLE FIREARMS.

(a) PROHIBITIONS.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

"(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

"(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

"(2) For purposes of this subsection—

"(A) the term 'firearm' does not include the frame or receiver of any such weapon;

"(B) the term 'major component' means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

"(C) the term 'Security Exemplar' means an object, to be fabricated at the direction of the Secretary, that is—

"(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

"(ii) suitable for testing and calibrating metal detectors:

Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Secretary shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a 'Security Exemplar' which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

"(3) Under such rules and regulations as the Secretary shall prescribe, this subsection shall not apply to the manufacture, posses-

Regulations.

sion, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Secretary shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

"(4) The Secretary shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

"(5) This subsection shall not apply to any firearm which—

"(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Secretary and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

"(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

"(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988."

(b) **PENALTY.**—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking "or (c)" and inserting in lieu thereof ", (c), or (f)"; and

(2) by adding at the end the following:

"(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both."

(c) **CONFORMING AMENDMENTS.**—Section 925 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting after "chapter" the following: ", except for provisions relating to firearms subject to the prohibitions of section 922(p)"; and

(2) by adding at the end the following:

"(f) The Secretary shall not authorize, under subsection (d), the importation of any firearm the importation of which is prohibited by section 922(p)."

(d) **RESEARCH AND DEVELOPMENT OF IMPROVED AIRPORT SECURITY SYSTEMS.**—The Administrator of the Federal Aviation Administration shall conduct such research and development as may be necessary to improve the effectiveness of airport security metal detectors and airport security x-ray systems in detecting firearms that, during the 10-year period beginning on the effective date of this Act, are subject to the prohibitions of section 922(p) of title 18, United States Code.

(e) **STUDIES TO IDENTIFY EQUIPMENT CAPABLE OF DISTINGUISHING SECURITY EXEMPLAR FROM OTHER METAL OBJECTS LIKELY TO BE CARRIED ON ONE'S PERSON.**—The Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall each conduct studies to identify available state-of-the-art equipment capable of detecting the Security Exemplar (as defined in section 922(p)(2)(C) of title 18, United States Code) and distinguishing the Security Exemplar from innocuous metal objects likely to be carried on one's person. Such studies shall be completed within 6 months after the

49 USC app.
1356 note.

18 USC 922 note.

date of the enactment of this Act and shall include a schedule providing for the installation of such equipment at the earliest practicable time at security checkpoints maintained or regulated by the agency conducting the study. Such equipment shall be installed in accordance with each schedule. In addition, such studies may include recommendations, where appropriate, concerning the use of secondary security equipment and procedures to enhance detection capability at security checkpoints.

USC 922 note.

(f) EFFECTIVE DATE AND SUNSET PROVISION.—

(1) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the 30th day beginning after the date of the enactment of this Act.

(2) 10-YEAR SUNSET.—Effective 10 years after the effective date of this Act—

(A) subsection (p) of section 922 of title 18, United States Code, is hereby repealed;

(B) subsection (f) of section 924 of such title is hereby repealed;

(C) subsection (f) of section 925 of such title is hereby repealed;

(D) section 924(a)(1) of such title is amended by striking “, (c), or (f)” and inserting in lieu thereof “or (c)”; and

(E) section 925(a) of such title is amended by striking “, except for provisions relating to firearms subject to the prohibitions of section 922(p),”.

Approved November 10, 1988.

LEGISLATIVE HISTORY—H.R. 4445 (S. 2180):

HOUSE REPORTS: No. 100-612 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 134 (1988):

May 10, considered and passed House.

May 25, considered and passed Senate, amended, in lieu of S. 2180.

Oct. 20, House concurred in Senate amendment with an amendment.

Oct. 21, Senate concurred in House amendment with an amendment. House concurred in Senate amendment.

An Act

to amend the Depository Institution Management Interlocks Act to revise the manner in which the service of directors of depository institutions and depository holding companies are regulated, and for other purposes.

As enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be referred to as the “Management Interlocks Revision Act of 1988”.

SECTION 2. AFFILIATION THRESHOLD.

Section 202(3)(B) of the Depository Institution Management Interlocks Act (12 U.S.C. 3201(3)(B)) is amended by striking “50 per centum” each place such term appears and inserting in lieu thereof “percent”.

SECTION 3. EXCLUSION OF CERTAIN ADVISORY AND HONORARY DIRECTORS.

Section 202(4) of the Depository Institution Management Interlocks Act (12 U.S.C. 3201(4)) is amended by striking out “(including advisory or honorary director)” and inserting in lieu thereof “(including an advisory or honorary director, except in the case of a depository institution with total assets of less than \$100,000,000)”.

SECTION 4. EXCEPTION FOR FAILED OR FAILING INSTITUTIONS WHICH ARE ACQUIRED.

Section 205 of the Depository Institution Management Interlocks Act (12 U.S.C. 3204) is amended by adding at the end thereof the following new paragraph:

“(7) A depository institution or a depository holding company which—

“(A) is closed or is in danger of closing, as determined by the appropriate Federal depository institutions regulatory agency in accordance with regulations prescribed by such agency; and

“(B) is acquired by another depository institution or depository holding company, during the 5-year period beginning on the date of the acquisition of the depository institution or depository holding company described in subparagraph (A).”.

SECTION 5. LIMITED EXCEPTION FOR DIVERSIFIED SAVINGS AND LOAN HOLDING COMPANIES.

EXCEPTION ESTABLISHED.—Section 205 of the Depository Institution Management Interlocks Act (12 U.S.C. 3204) is amended by inserting after paragraph (7) (as added by section 4 of this Act) the following new paragraph:

“(8)(A) A diversified savings and loan holding company (as defined in section 408(a)(1)(F) of the National Housing Act) with

Nov. 10, 1988
[H.R. 4879]

Management
Interlocks
Revision Act of
1988.
12 USC 3201
note.

respect to the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if—

“(i) notice of the proposed dual service is given by such diversified savings and loan holding company to—

“(I) the appropriate Federal depository institutions regulatory agency for such company; and

“(II) the appropriate Federal depository institutions regulatory agency for the nonaffiliated depository institution or depository holding company of which such person is also a director,

not less than 60 days before such dual service is proposed to begin; and

“(ii) the proposed dual service is not disapproved by any such appropriate Federal depository institutions regulatory agency before the end of such 60-day period.

“(B) Any appropriate Federal depository institutions regulatory agency may disapprove, under subparagraph (A)(ii), a notice of proposed dual service by any individual if such agency finds that—

“(i) the dual service cannot be structured or limited so as to preclude the dual service’s resulting in a monopoly or substantial lessening of competition in financial services in any part of the United States;

“(ii) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

“(iii) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information required by such agency.

“(C) Any appropriate Federal depository institutions regulatory agency may, at any time after the end of the 60-day period referred to in subparagraph (A), require that any dual service by any individual which was not disapproved by such agency during such period be terminated if a change in circumstances occurs with respect to any depository institution or depository holding company of which such individual is a director that would have provided a basis for disapproval of the dual service during such period.”

(b) APPROPRIATE FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCY DEFINED.—

SC 3201.

(1) IN GENERAL.—Section 202 of the Depository Institution Management Interlocks Act (12 U.S.C. 3202) is amended—

(A) by adding at the end thereof the following new paragraph:

“(6) the term ‘appropriate Federal depository institutions regulatory agency’ means, with respect to any depository institution or depository holding company, the agency referred to in section 209 in connection with such institution or company.”;

(B) by striking out “and” at the end of paragraph (4); and

(C) by striking out the period at the end of paragraph (5) and inserting in lieu thereof “; and”.

(2) CONFORMING AMENDMENT.—Section 206(a) of the Depository Institution Management Interlocks Act (12 U.S.C. 3205(a)) is amended by striking out “banking agency (as set forth in

section 209)” and inserting in lieu thereof “depository institutions regulatory agency”.

E. 6. EXTENSION OF GRANDFATHER CLAUSE.

Subsections (a) and (b) of section 206 of the Depository Institution Management Interlocks Act (12 U.S.C. 3205) are each amended by striking “ten years” and inserting in lieu thereof “15 years”.

Approved November 10, 1988.

LEGISLATIVE HISTORY—H.R. 4879:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 6, considered and passed House.

Oct. 21, considered and passed Senate.

Public Law 100-651
100th Congress

Joint Resolution

Nov. 10, 1988

[H.J. Res. 649]

Designating November 12, 1988, as "National Firefighters Day".

Whereas there are over 2,000,000 professional and volunteer firefighters in the United States;

Whereas firefighters responded to over 2,300,000 fires and 8,700,000 emergencies other than fires in 1984;

Whereas fires annually cause approximately 6,000 deaths and \$10,000,000,000 worth of property damage;

Whereas firefighters have given their lives and risked injury to preserve the lives of others and to protect our Nation's property;

Whereas the contributions and sacrifices of our valiant firefighters often go unreported and are inadequately recognized by the public; and

Whereas the work of firefighters deserves the attention and gratitude of all Americans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 12, 1988, is designated as "National Firefighters Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

Approved November 10, 1988.

LEGISLATIVE HISTORY—H.J. Res. 649:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 21, considered and passed House and Senate.

Public Law 100-652
100th Congress

Joint Resolution

To designate January 4, 1989, as "National Commissioned Corps of the Public Health Service Centennial Day".

Nov. 10, 1988

[S.J. Res. 395]

Whereas the commissioned corps of the Public Health Service of the United States has compiled an exceptional record of service to the health of the people of the United States and the world through concerted efforts at disease prevention, health promotion, environmental intervention, disease control, biomedical research, health care delivery, health program management, policy development, and implementation;

Whereas the commissioned corps of the Public Health Service has been instrumental in the achievement of many innovations and breakthroughs throughout the field of health care;

Whereas, because of diverse and varied training and background, the commissioned corps of the Public Health Service have maintained a highly effective, mobile, and adaptive cadre of health and medical experts that have performed efficiently during emergencies, epidemics, and other adverse situations with courage, proficiency, and valor;

Whereas the officers of the commissioned corps of the Public Health Service have worked to eradicate diseases such as pellagra and smallpox and improved the health of mothers, children, and handicapped individuals through significant accomplishments such as the control of tuberculosis and the development of protective vaccines;

Whereas the officers of the commissioned corps of the Public Health Service have worked to increase the protection of consumers through the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and the Mental Health Systems Act (42 U.S.C. 9401 et seq.) and provided health care services for the Merchant Marine, the Coast Guard, the Bureau of Prisons, American Indians, and Native Alaskans;

Whereas on January 4, 1989, the commissioned corps of the Public Health Service celebrates the completion of its first century of existence and begins its second century with the goal of further enhancing the health of the people of the United States through measures such as achieving a drug-free society and eradicating the disease of acquired immune deficiency syndrome: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That January 4, 1989, is designated as "National Commissioned Corps of the Public Health Service Centennial Day". The President of the United States is authorized and requested to issue a proclamation calling upon the

people of the United States to observe the day with appropriate ceremonies and activities.

Approved November 10, 1988.

LEGISLATIVE HISTORY—S.J. Res. 395 (H.J. Res. 672):

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 21, H.J. Res. 672 considered and passed House. S.J. Res. 395 considered and passed Senate and House.

Public Law 100-653
100th Congress

An Act

To reauthorize and amend certain wildlife laws, and for other purposes.

Nov. 14, 1988

[H.R. 4030]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Conservation.
Fish and fishing.

TITLE I—LACEY ACT AMENDMENTS

SEC. 101. PROHIBITED ACTS.

Section 3 of the Lacey Act Amendments of 1981 (16 U.S.C. 3372) is amended—

(1) in subsection (a)(1) (16 U.S.C. 3372(a)(1)) by striking “taken or possessed” and inserting in lieu thereof “taken, possessed, transported, or sold”;

(2) by striking subsection (a)(4) (16 U.S.C. 3372(a)(4)) and redesignating subsection (a)(5) as subsection (a)(4); and

(3) by adding at the end thereof the following:

“(c) **SALE AND PURCHASE OF GUIDING AND OUTFITTING SERVICES AND INVALID LICENSES AND PERMITS.**—

“(1) **SALE.**—It is deemed to be a sale of fish or wildlife in violation of this Act for a person for money or other consideration to offer or provide—

Hunting.

“(A) guiding, outfitting, or other services; or

“(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

“(2) **PURCHASE.**—It is deemed to be a purchase of fish or wildlife in violation of this Act for a person to obtain for money or other consideration—

“(A) guiding, outfitting, or other services; or

“(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

“(d) **FALSE LABELING OFFENSES.**—It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be—

Imports.
Exports.
Commerce and
trade.
Plants.

“(1) imported; exported, transported, sold, purchased, or received from any foreign country; or

“(2) transported in interstate or foreign commerce.”.

SEC. 102. PENALTY.

(a) **CIVIL PENALTY.**—Paragraph (1) of section 4(a) of the Lacey Act Amendments of 1981 (16 U.S.C. 3373(a)(1)) is amended by inserting “and any person who knowingly violates section 3(d),” after “any underlying law, treaty, or regulation.”.

(b) **CRIMINAL PENALTY.**—Subsection (d) of section 4 of the Lacey Act Amendments of 1981 (16 U.S.C. 3373(d)) is amended by adding at the end the following:

“(3) Any person who knowingly violates section 3(d)—

“(A) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, if the offense involves—

Imports.
Exports.
Plants.

“(i) the importation or exportation of fish or wildlife or plants; or

“(ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than \$350; and

“(B) shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (A).”

16 USC 3373.

(c) CONFORMING AMENDMENTS.—Section 4 is amended in subsections (a)(1), (d)(1)(A), (d)(1)(B), and (d)(2) by striking “(other than section 3(b))” each place those words appear and inserting in lieu thereof “(other than subsections (b) and (d) of section 3)”.

SEC. 103. REVIEW OF CIVIL PENALTY.

The first sentence of subsection (c) of section 4 of the Lacey Act Amendments of 1981 (16 U.S.C. 3373(c)) is amended to read as follows:

“(c) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate District Court of the United States by filing a complaint in such court within 30 days after the date of such order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General, and the appropriate United States attorney.”

SEC. 104. ENFORCEMENT POWERS.

Subsection (b) of section 6 of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(b)) is amended in the first sentence by striking all after the first clause and before the proviso and inserting the following: “may, when enforcing this Act, make an arrest without a warrant, in accordance with any guidelines which may be issued by the Attorney General, for any offense under the laws of the United States committed in the person’s presence, or for the commission of any felony under the laws of the United States, if the person has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; may search and seize, with or without a warrant, in accordance with any guidelines which may be issued by the Attorney General;”.

TITLE II—SIKES ACT AMENDMENTS AND AUTHORIZATION

SEC. 201. STATE USE OF AMOUNTS FROM STAMP FEES.

Section 203(b)(3) of Public Law 86-797 (commonly known as the Sikes Act; 16 U.S.C. 670i(b)(3)) is amended to read as follows:

“(3) Except for expenses incurred in the printing, issuing, or selling of such stamps, the fees collected for such stamps by the State agency shall be utilized in carrying out conservation and rehabilitation programs implemented under this title in the State concerned. Such fees may be used by the State agency to acquire lands or interests therein from willing sellers or donors to provide public access to program lands that have no existing public access for enhancement of outdoor recreation and wildlife conservation:

vided, That the Secretary of Agriculture and the Secretary of the Interior maintain such access, or ensure that maintenance is provided for such access, through or to lands within their respective jurisdiction.”.

202. AUTHORIZATION OF APPROPRIATIONS.

(c) AUTHORIZATION OF APPROPRIATIONS FOR CONSERVATION PROGRAMS ON MILITARY RESERVATIONS.—Subsections (b) and (c) of section 106 of Public Law 86-797 (16 U.S.C. 670f (b) and (c)) are each amended by striking “and 1988,” and inserting in lieu thereof “1988, 1989, 1990, 1991, 1992, and 1993,”.

(d) AUTHORIZATION OF APPROPRIATIONS FOR CONSERVATION PROGRAMS ON PUBLIC LANDS.—Subsections (a) and (b) of section 209 of Public Law 86-797 (16 U.S.C. 670o(a) and (b)) are each amended by striking “and 1988,” and inserting in lieu thereof “1988, 1989, 1990, 1991, 1992, and 1993,”.

TITLE III—WETLANDS LOAN FUND EXTENSION: MIGRATORY BIRD HUNTING STAMP ACT AMENDMENT

301. WETLANDS LOAN FUND EXTENSION.

The first section of the Act entitled “An Act to promote the conservation of migratory waterfowl by the acquisition of wetlands, for other essential waterfowl habitat, and for other purposes, approved October 4, 1961 (16 U.S.C. 715k-3), is amended by striking “the close of September 30, 1988,” and inserting in lieu thereof “when all amounts authorized to be appropriated have been expended,”.

302. MIGRATORY BIRD HUNTING STAMP ACT AMENDMENT.

Section 5 of the Act of March 16, 1934 (commonly known as the Migratory Bird Hunting Stamp Act; 16 U.S.C. 718e(c)) is amended in its second sentence by inserting after “paid” the following: “, after deducting expenses for marketing,”.

TITLE IV—CONVEYANCE AND NAMING OF FISH HATCHERIES

401. CONVEYANCE.

Georgia.

Subject to section 403, the Secretary of the Interior shall convey, without consideration, to the University of Georgia all right, title, and interest of the United States in and to the property described in section 402, for use by the University of Georgia in its fishery research and extension program.

402. DESCRIPTION OF PROPERTY.

The property referred to in section 401 is a tract of land comprising approximately 63 acres, and improvements thereto, located in lots 25 and 48 of the 11th District, 3rd Section, Whitfield County, Georgia, as generally depicted in the legal description of the Cohutta Fish Hatchery contained in Appendix A of the Memorandum of Understanding between the United States Fish and Wildlife Service and the University of Georgia, Agreement No. 14-16-0004-83-926, dated September 29, 1983.

SEC. 403. REVERSIONARY INTEREST OF THE UNITED STATES.

The property conveyed under section 401 of this title shall continue to be reserved, maintained, and utilized by the University of Georgia in its fishery research and extension program. If any of the property is used for any other purpose, the title to such property shall revert to the United States.

orgia.

SEC. 404. NAMING OF BO GINN NATIONAL FISH HATCHERY AND AQUARIUM.

The fish hatchery and aquarium known as the Millen National Fish Hatchery, located on Georgia State Highway 25 north of Millen, Georgia, shall be known as the "Bo Ginn National Fish Hatchery and Aquarium". Any reference in any law, map, regulation, document, record, or other paper of the United States to such hatchery and aquarium is deemed to be a reference to the "Bo Ginn National Fish Hatchery and Aquarium".

SEC. 405. CONVEYANCE OF FISH HATCHERY TO THE COMMONWEALTH OF KENTUCKY.

Notwithstanding any other provision of law and within 180 days of the date of enactment of this Act, the Secretary of the Interior shall convey, without reimbursement, to the Commonwealth of Kentucky, all of the right, title, and interest, including the water rights, of the United States in and to the fish hatchery property located approximately 14 miles due north of the city of Frankfort in Franklin County, Kentucky and known as the Frankfort National Fish Hatchery, consisting of 114.2 acres, more or less, of land together with any improvements and related personal property thereon. The property conveyed by this Act shall be used by the Kentucky Department of Fish and Wildlife Resources as a part of the Kentucky fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

SEC. 406. CONVEYANCE OF FISH HATCHERY TO THE STATE OF NEW HAMPSHIRE.

Notwithstanding any other provision of law, the Secretary of the Interior shall convey, without reimbursement, to the State of New Hampshire no later than December 31, 1988, all of the right, title, and interest of the United States in and to those improvements and related personal property under the Secretary's jurisdiction, including buildings, structures and equipment, associated with the United States' facility known as the Berlin National Fish Hatchery and located in the northwest corner of Berlin township, Coos County, New Hampshire. The improvements and related personal property conveyed shall be used by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program and if they are used for any other purpose, title to such property shall revert to the United States.

SEC. 407. CONVEYANCE OF FISH HATCHERY TO THE STATE OF WISCONSIN.

Notwithstanding any other provision of law and within 180 days of the date of enactment of this Act, the Secretary of the Interior shall convey, without reimbursement, to the State of Wisconsin, all of the right, title, and interest, including the easements and water rights, of the United States in and to the fish hatchery property located in the Town of Lake Mills, Wisconsin, and known as the

Lake Mills National Fish Hatchery, consisting of the land together with any improvements and related personal property thereon. The property conveyed by this Act shall be used by the Wisconsin Department of Natural Resources as a part of the Wisconsin fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

TITLE V—ACQUISITION OF LANDS ADJACENT TO KILAUEA POINT NATIONAL WILDLIFE REFUGE

Hawaii.

SEC. 501. ADDITIONAL LANDS.

(a) **AUTHORIZATION.**—The Secretary of the Interior is authorized to acquire certain additional lands adjacent to the Kilauea Point National Wildlife Refuge on Kauai, Hawaii, which shall become part of the Kilauea Point National Wildlife Refuge upon acquisition by the Secretary.

(b) **DESCRIPTION OF LANDS.**—The lands to be acquired pursuant to subsection (a) are—

- (1) Crater Hill, comprising approximately 101.1 acres; and
- (2) Mokolea Point, comprising 37.6 acres.

SEC. 502. CONSTRUCTION AND ENHANCEMENT PROJECTS.

(a) **IN GENERAL.**—Within the Kilauea Point National Wildlife Refuge (upon acquisition of the lands described in section 501), the Secretary of the Interior may—

- (1) construct and maintain access foot trails, including pedestrian viewing trails, to provide for public access;
- (2) construct an access road for these lands to facilitate law enforcement and ensure public safety;
- (3) acquire, or construct, and maintain a fence to provide for wildlife protection;
- (4) conduct native plant restoration and wildlife enhancement activities; and
- (5) establish a recreation area in the vicinity of Kahili Bay.

(b) **CONSTRUCTION REQUIREMENT.**—Trails and access roads constructed under this section shall be constructed in a manner consistent with preserving the wild and scenic beauty of the wildlife refuge.

SEC. 503. AUTHORIZATION OF FUNDING.

There is hereby authorized to be appropriated \$2,600,000 to carry out the provisions of this title.

TITLE VI—AMENDMENTS TO ACT PROVIDING FOR RESTORATION OF KLAMATH RIVER BASIN FISHERY RESOURCES

SEC. 601. TRAVEL EXPENSES FOR TASK FORCE MEMBERS.

Section 4(i) of the Act entitled “An Act to provide for the restoration of the fishery resources of the Klamath River Basin, and for other purposes” (approved October 27, 1986; 16 U.S.C. 460ss-3(i)) is amended to read as follows:

“(i) **EXPENSES.**—

“(1) **TRAVEL EXPENSES.**—While away from their homes or regular places of business in the performance of services for the Task Force, Task Force members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in the

Government service are allowed travel expenses under section 5703 of title 5 of the United States Code. Any Task Force member who is an employee of an agency or governmental unit and is eligible for travel expenses from that agency or unit for performing services for the Task Force is not eligible for travel expenses under this paragraph.

"(2) LIMITATION ON SPENDING AUTHORITY.—No money authorized to be appropriated under section 6 may be used to reimburse any agency or governmental unit (whose employees are Task Force members) for time spent by any such employee performing Task Force duties."

SEC. 602. PROCEDURES OF COUNCIL AND TASK FORCE.

(a) COUNCIL PROCEDURES.—Section 3(g)(1) of such Act of October 27, 1986 (16 U.S.C. 460ss-2(g)(1)) is amended to read as follows:

"(1) PROCEDURES.—The Council shall establish practices and procedures for the carrying out of its functions under subsection (b). The procedures shall include requirements that—

"(A) a quorum of the Council must be present before business may be transacted; and

"(B) no comprehensive plan or recommendation referred to in subsection (b)(1) (A) or (B) may be adopted by the Council except by the unanimous vote of all members present and voting."

(b) TASK FORCE PROCEDURES.—Section 4(f)(1) of such Act of October 27, 1986 (16 U.S.C. 460ss-3(f)(1)) is amended to read as follows:

"(1) PROCEDURES.—The Task Force shall establish practices and procedures for the carrying out of its functions under subsection (b). The procedures shall include the requirement that a quorum of the Task Force must be present before business may be transacted."

SEC. 603. CONFORMING AND TECHNICAL AMENDMENTS.

Such Act of October 27, 1986, is further amended as follows:

(1) Sections 3(i) and 4(h) are each amended by striking out "or the State of California" and inserting "the State of California, or the State of Oregon".

(2) Section 3(j)(1) is amended by adding at the end thereof the following new sentence: "Any Council member who is an employee of an agency or governmental unit and is eligible for travel expenses from that agency or unit for performing services for the Council is not eligible for travel expenses under this paragraph."

(3) The first sentence of section 6(a) is amended by inserting before the period the following: "and for the payment of travel expenses under sections 3(j) and 4(i)".

(4) Section 6(b)(3) is amended by striking out "volunteers" and all that follows thereafter and inserting "volunteers".

SEC. 604. SHORT TITLE.

Such Act of October 27, 1986, is further amended by adding at the end thereof the following new section:

"SEC. 8. SHORT TITLE.

"This Act may be cited as the 'Klamath River Basin Fishery Resources Restoration Act'."

16 USC 460ss-5.

701. JOINT FEDERAL-STATE STUDY AND RECOMMENDATIONS.

IN GENERAL.—

(1) **STUDY.**—Subject to section 703, the Director of the United States Fish and Wildlife Service (hereinafter in this title referred to as the “Director”) and the Secretary of the Army (hereinafter in this title referred to as the “Secretary”) shall—

(A) jointly undertake a comprehensive study of the fishery resources and fishery habitats of the Russian River (California) basin (hereinafter in this Act referred to as the “basin”) and, on the basis of such study, develop goals and short-term and long-term recommended actions for maximizing the restoration and conservation of such resources and habitats;

(B) invite the Director of the Department of Fish and Game of the State of California to participate in undertaking the study and developing recommended actions; and

(C) submit the study and recommended goals and actions to Congress before October 1, 1991.

(2) **PARTICIPATION OF DIRECTOR OF CALIFORNIA DEPARTMENT OF FISH AND GAME.**—If there is an affirmative response to the invitation extended under paragraph (1)(B), the Director of the Department of Fish and Game of the State of California is authorized to participate jointly with the Director and the Secretary in undertaking the study and developing recommended goals and actions.

(3) **MEMORANDUM OF UNDERSTANDING.**—The Director, the Secretary, and the Director of the Department of Fish and Game of the State of California, if a joint participant, shall enter into a memorandum of understanding which shall set forth the respective responsibilities of each of the agencies in carrying out the study under this title. The United States Fish and Wildlife Service shall be the lead agency for purposes of carrying out this title.

(4) **CONSULTATION.**—In carrying out this title, the Director and the Secretary shall, to the maximum extent practicable, consult with the National Marine Fisheries Service, appropriate commercial and recreational fishing interests, affected local governments, and (if the joint participation referred to in subsection (a)(2) is not effected) the Director of the Department of Fish and Game of the State of California.

702. STUDY CONTENTS.

The study referred to in section 701 shall include, but is not limited to, the following:

(1) **DESCRIPTION OF FISHERY RESOURCES AND HABITATS.**—A description of the fishery resources and fishery habitats of the basin that is based, to the maximum extent practicable, on new stream surveys and other field data collected expressly for the study. The description shall include, but not be limited to—

(A) an identification, and an estimate of the extent of utilization, of the existing spawning and rearing areas in the mainstem and tributaries;

(B) an evaluation of the quality and quantity of gravels in the spawning areas in the mainstem and tributaries;

(C) estimates of the instream flow needs for steelhead and chinook salmon in the mainstem and tributaries;

(D) population estimates of all fish species in the basin that are of sport or commercial value;

(E) an evaluation of the effectiveness of screens on water diversions along the mainstem and tributaries; and

(F) an identification of alternative bank stabilization methods which would allow for growth of shade producing riparian vegetation.

(2) **DESCRIPTION OF BASIN AND ANALYSIS.**—A description of the basin and an analysis of how its characteristics, and current and planned land and water use practices within the basin, have affected, and can be expected to affect, the fishery resources and fishery habitats of the basin.

(3) **HISTORICAL ACCOUNT OF FISHERY RESOURCES AND HABITATS AND ANALYSIS.**—A historical account of the fishery resources and fishery habitats of the basin and an analysis of the current status and the trends of such resources and habitats, including an analysis of the existing and projected problems facing such resources and habitats.

(4) **EVALUATION OF INFORMATION.**—An evaluation of the adequacy of the information that is currently available, and specification of the additional kinds and quantity of information that must be obtained, for purposes of carrying out the conservation and restoration of the fishery resources and the fishery habitats of the basin.

(5) **FEDERAL, STATE, AND LOCAL GOVERNMENT ROLES.**—A discussion of the respective roles of the Federal, State, and local government authorities that pertain to the conservation and restoration of the fishery resources and fishery habitats of the basin, with particular attention being given to the fishery management plans and responsibilities of such authorities and the relationship of such plans with applicable private fishery management plans.

SEC. 703. COST SHARING.

(a) **REQUIREMENT FOR SHARING.**—The State of California may not jointly participate in undertaking the study referred to in section 701 or in developing goals and recommended actions unless the Director is satisfied that the State of California will pay, on a basis considered timely and appropriate by the Director and from non-Federal sources, one-third of the cost of the study.

(b) **IN-KIND CONTRIBUTIONS.**—In addition to cash outlays, the Director shall consider as payment by the State of California under subsection (a) the value of in-kind contributions and personal property provided by, or on behalf of, the State for purposes of carrying out the study. Valuations made by the Director under this subsection are final and not subject to judicial review.

(c) **IN-KIND CONTRIBUTIONS.**—For purposes of subsection (b), in-kind contributions may be in the form of personal services rendered by volunteers.

(d) **REGULATIONS.**—The Director shall by regulation establish—

(1) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as in-kind contributions; and

(2) the standards under which the Director will determine the value of in-kind contributions and real and personal property for purposes of subsection (b).

LIMITATION.—The Director may not consider the expenditure, directly or indirectly, with respect to the study of Federal funds received by the State of California or any local government of the State to be a financial contribution from a non-Federal source to carry out the study.

4. AUTHORIZATION OF APPROPRIATIONS.

In carrying out this Act there are authorized to be appropriated to the Director and to the Secretary a total of not more than \$1,000,000 for fiscal years 1990 and 1991.

TITLE VIII—AMENDMENTS TO THE FISH AND WILDLIFE CONSERVATION ACT OF 1980

1. AUTHORIZATION OF APPROPRIATIONS.

Section 11 of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2910) is amended by striking “and 1988.” and inserting in lieu thereof “1988, 1989, and 1990.”.

2. FEDERAL CONSERVATION OF MIGRATORY NONGAME BIRDS.

Section 12 of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2910), add the following new section:

13. FEDERAL CONSERVATION OF MIGRATORY NONGAME BIRDS.

CONSERVATION ACTIVITIES.—The Secretary shall undertake the following research and conservation activities, in coordination with other Federal, State, international and private organizations, to assist in fulfilling his responsibilities to conserve migratory nongame birds under existing authorities provided by the Migratory Bird Treaty Act and Migratory Bird Conservation Act (16 U.S.C. 265) and section 8A(e) of the Endangered Species Act (16 U.S.C. 1531(e)) implementing the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere:

“(1) monitor and assess population trends and status of species, subspecies, and populations of all migratory nongame birds;

“(2) identify the effects of environmental changes and human activities on species, subspecies, and populations of all migratory nongame birds;

“(3) identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543); and

“(4) identify conservation actions to assure that species, subspecies, and populations of migratory nongame birds identified under paragraph (3) do not reach the point at which the measures provided pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543) become necessary.

REPORTS.—Within one year after the date of enactment of this Act and at five-year intervals thereafter, the Secretary shall prepare a report that presents the results of the activities taken pursuant to subsection (a) of this section and that describes any actions to carry out those conservation actions identified pursuant to paragraph (4) of subsection (a) of this section. Such reports shall be submitted to the Committee on Environment and Public Works of the United States Senate and to the Committee on

16 USC 2912.

Research and development.

Merchant Marine and Fisheries of the United States House of Representatives.”.

TITLE IX—MISCELLANEOUS AMENDMENTS

State and local
governments.
Territories, U.S.
16 USC 742m.

SEC. 901. RELINQUISHMENT OF EXCLUSIVE LEGISLATIVE JURISDICTION.

Notwithstanding any other provision of law, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, may relinquish to a State, or to a Commonwealth, territory, or possession of the United States, the exclusive legislative jurisdiction of the United States over all or part of any United States Fish and Wildlife Service lands or interests therein, including but not limited to National Wildlife Refuge System and National Fish Hatchery System lands, in that State, Commonwealth, territory, or possession. Relinquishment of exclusive legislative jurisdiction under this subsection may be accomplished (1) by filing with the Governor (or, if none, the chief executive officer) of the State, Commonwealth, territory, or possession concerned, a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

SEC. 902. REMOVAL OF THE A. REGINA.

Section 1115 of the Water Resources Development Act of 1986, Public Law 99-662 (1986), 100 Stat. 4235, shall be amended by striking the final period thereof and by adding thereafter the following: “: *Provided*, That, in furtherance of the work authorized by paragraph (3) hereof, and conditioned on successful removal of the A. Regina, the Secretary of the Army is hereby authorized to transfer upon such conditions as he shall deem fit the title to a Delong Pier Jack-Up Barge Type A, serial number BPA6814, directly to any entity, including any private corporation to be used to assist in the removal of the wreck of the said A. Regina. Procedures otherwise governing the disposal of government property, shall not apply to the above authorized transfer of title. The foregoing actions shall be at no cost to the United States, and shall constitute full compliance by the Secretary of the Army with the requirement of paragraph (3) hereof.”.

SEC. 903. AMENDMENT TO THE NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT.

Section 5 of the Act of March 26, 1984 (16 U.S.C. 3704), otherwise known as the “National Fish and Wildlife Foundation Establishment Act”, is amended by inserting the following at the end of section 5: “Notwithstanding any other provision of this section, the Secretary of the Interior is authorized to continue to provide facilities, and necessary support services for such facilities, to the National Fish and Wildlife Foundation after March 26, 1989, on a space available, reimbursable cost basis.”.

SEC. 904. AMENDMENT TO THE NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966.

Subsection (e) of section 4 of the Act of October 15, 1966 (16 U.S.C. 668dd(e)), otherwise known as the “National Wildlife Refuge System Administration Act of 1966”, is amended by striking “thereunder” and all that follows through the end of the sentence and inserting in

“thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.”.

TECHNICAL CORRECTION.

(d)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1536), as amended by the African Elephant Conservation Act of 1988, shall be amended by striking “recreational purposes); or” and inserting in lieu thereof “recreational purposes) or plants; or”.

SECTION 101—PROTECTION OF MASSACHUSETTS BAY

SHORT TITLE.

This Act may be cited as the “Massachusetts Bay Protection Act”.

Massachusetts Bay Protection Act of 1988.
Environmental protection.
33 USC 1251 note.
33 USC 1330 note.

DEFINITION.

For purposes of this title, the term “Massachusetts Bay” includes Massachusetts Bay, Cape Cod Bay, and Boston Harbor, consisting of the area extending from Cape Ann, Massachusetts south to the southern shore of Cape Cod, Massachusetts.

FINDINGS AND PURPOSE.

33 USC 1330 note.

NOTES.—The Congress finds and declares that—
Massachusetts Bay comprises a single major estuarine and geographic system extending from Cape Ann, Massachusetts to the northern reaches of Cape Cod, encompassing Boston Harbor, Massachusetts Bay, and Cape Cod Bay;
several major riverine systems, including the Charles, Merrimack, and Mystic Rivers, drain the watersheds of eastern Massachusetts into the Bay;
the shorelines of Massachusetts Bay, first occupied in the 1600's, are home to over 4 million people and support a large industrial and recreational economy;
Massachusetts Bay supports important commercial fishery, including lobsters, finfish, and shellfisheries, and is home to several endangered species and marine mammals;
Massachusetts Bay also constitutes an important recreational resource, providing fishing, swimming, and boating opportunities to the region;
rapidly expanding coastal populations and pollution pose significant threats to the long-term health and integrity of Massachusetts Bay;
while the cleanup of Boston Harbor will contribute significantly to improving the overall environmental quality of Massachusetts Bay, expanded efforts encompassing the entire estuary will be necessary to ensure its long-term health;
the concerted efforts of all levels of Government, the private sector, and the public at large will be necessary to protect and enhance the environmental integrity of Massachusetts Bay; and
the designation of Massachusetts Bay as an Estuary of National Significance and the development of a comprehensive management plan for protecting and restoring the Bay may contribute significantly to its long-term health and environmental integrity.

(b) **PURPOSE.**—The purpose of this title is to protect and enhance the environmental quality of Massachusetts Bay by providing for its designation as an Estuary of National Significance and by providing for the preparation of a comprehensive restoration plan for the Bay.

SEC. 1004. DESIGNATION AS ESTUARY OF NATIONAL SIGNIFICANCE.

Section 320(a)(2)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1330(a)(2)(B)) is amended by inserting "Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor);" after "Buzzards Bay, Massachusetts;".

USC 1330
ote.

SEC. 1005. FUNDING SOURCES.

Within one year of enactment, the Administrator of the United States Environmental Protection Agency and the Governor of Massachusetts shall undertake to identify and make available sources of funding to support activities pertaining to Massachusetts Bay undertaken pursuant to or authorized by section 320 of the Clean Water Act, and shall make every effort to coordinate existing research, monitoring or control efforts with such activities.

Approved November 14, 1988.

LEGISLATIVE HISTORY—H.R. 4030:

HOUSE REPORTS: No. 100-732 (Comm. on Merchant Marine and Fisheries).
SENATE REPORTS: No. 100-563 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD, Vol. 134 (1988):
July 26, considered and passed House.
Oct. 14, considered and passed Senate, amended.
Oct. 19, House concurred in Senate amendments.

Public Law 100-654
100th Congress

An Act

To amend the provisions of title 5, United States Code, relating to the health benefits program for Federal employees and certain other individuals.

Nov. 14, 1988

[H.R. 5102]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Employees Health Benefits Amendments Act of 1988”.

Federal
Employees
Health Benefits
Amendments
Act of 1988.
5 USC 8901 note.

TITLE I—PROVISIONS RELATING TO HEALTH CARE PROVIDERS

SEC. 101. AUTHORITY TO IMPOSE DEBARMENT AND OTHER SANCTIONS.

(a) IN GENERAL.—Title 5, United States Code, is amended by inserting after section 8902 the following:

“§ 8902a. Debarment and other sanctions

“(a)(1) For the purpose of this section—

“(A) the term ‘provider of health care services or supplies’ or ‘provider’ means a physician, hospital, or other individual or entity which furnishes health care services or supplies;

“(B) the term ‘individual covered under this chapter’ or ‘covered individual’ means an employee, annuitant, family member, or former spouse covered by a health benefits plan described by section 8903 or 8903a; and

“(C) an individual or entity shall be considered to have been ‘convicted’ of a criminal offense if—

“(i) a judgment of conviction for such offense has been entered against the individual or entity by a Federal, State, or local court;

“(ii) there has been a finding of guilt against the individual or entity by a Federal, State, or local court with respect to such offense;

“(iii) a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court with respect to such offense; or

“(iv) in the case of an individual, the individual has entered a first offender or other program pursuant to which a judgment of conviction for such offense has been withheld;

without regard to the pendency or outcome of any appeal (other than a judgment of acquittal based on innocence) or request for relief on behalf of the individual or entity.

“(2)(A) Notwithstanding section 8902(j) or any other provision of this chapter, if, under subsection (b) or (c), a provider is barred from participating in the program under this chapter, no payment may be

made by a carrier pursuant to any contract under this chapter (either to such provider or by reimbursement) for any service or supply furnished by such provider during the period of the debarment.

Contracts.

“(B) Each contract under this chapter shall contain such provisions as may be necessary to carry out subparagraph (A) and the other provisions of this section.

“(b) The Office of Personnel Management may bar the following providers of health care services or supplies from participating in the program under this chapter:

Fraud.

“(1) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to fraud, corruption, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care service or supply.

“(2) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care service or supply.

“(3) Any provider that has been convicted, under Federal or State law, in connection with the interference with or obstruction of an investigation or prosecution of a criminal offense described in paragraph (1) or (2).

Drugs and
drug abuse.

“(4) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

“(5) Any provider—

“(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

“(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity.

Claims.

“(c) Whenever the Office determines—

“(1) in connection with a claim presented under this chapter, that a provider of health care services or supplies—

“(A) has charged for health care services or supplies that the provider knows or should have known were not provided as claimed; or

“(B) has charged for health care services or supplies in an amount substantially in excess of such provider's customary charges for such services or supplies, or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies;

“(2) that a provider of health care services or supplies has knowingly made, or caused to be made, any false statement or misrepresentation of a material fact which is reflected in a claim presented under this chapter; or

“(3) that a provider of health care services or supplies has knowingly failed to provide any information required by a carrier or by the Office to determine whether a payment or

sement is payable under this chapter or the amount of
h payment or reimbursement;

may, in addition to any other penalties that may be
y law, and after consultation with the Attorney Gen-
a civil monetary penalty of not more than \$10,000 for
service involved. In addition, such a provider shall be
assessment of not more than twice the amount claimed
h item or service. In addition, the Office may make a
on in the same proceeding to bar such provider from
g in the program under this chapter.

Office—

may not initiate any debarment proceeding against a
r, based on such provider's having been convicted of a
l offense, later than 6 years after the date on which such
r is so convicted; and

may not initiate any action relating to a civil penalty,
ent, or debarment under this section, in connection with
im, later than 6 years after the date the claim is pre-
as determined under regulations prescribed by the

Claims.

making a determination relating to the appropriateness of
the period of any debarment under this section, or the
ness of imposing or the amount of any civil penalty or
under this section, the Office shall take into account—
he nature of any claims involved and the circumstances
hich they were presented;

Claims.

he degree of culpability, history of prior offenses or
er conduct of the provider involved; and
uch other matters as justice may require.

debarment of a provider under subsection (b) or (c) shall
at such time and upon such reasonable notice to such
id to carriers and covered individuals, as may be speci-
fications prescribed by the Office.

cept as provided in subparagraph (B), a debarment shall
with respect to any health care services or supplies
y a provider on or after the effective date of such
ebarment.

oarment shall not apply with respect to inpatient institu-
ces furnished to an individual who was admitted to the
before the date the debarment would otherwise become
til the passage of 30 days after such date, unless the
mines that the health or safety of the individual receiv-
services warrants that a shorter period, or that no such
fforded.

notice referred to in paragraph (1) shall specify the date
debarment becomes effective and the minimum period of
ich such debarment is to remain effective.

provider barred from participating in the program under
r may, after the expiration of the minimum period of
referred to in paragraph (3), apply to the Office, in such
the Office may by regulation prescribe, for termination
ment.

Office may—

erminate the debarment of a provider, pursuant to an
tion filed by such provider after the end of the minimum
ent period, if the Office determines, based on the con-
the applicant, that—

"(I) there is no basis under subsection (b) or (c) for continuing the debarment; and

"(II) there are reasonable assurances that the types of actions which formed the basis for the original debarment have not recurred and will not recur; or

"(ii) notwithstanding any provision of subparagraph (A), terminate the debarment of a provider, pursuant to an application filed by such provider before the end of the minimum debarment period, if the Office determines that—

"(I) based on the conduct of the applicant, the requirements of subclauses (I) and (II) of clause (i) have been met; and

"(II) early termination under this clause is warranted based on the fact that the provider is the sole community provider or the sole source of essential specialized services in a community, or other similar circumstances.

"(5) The Office shall—

"(A) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of a provider barred from participation in the program under this chapter of the fact of the debarment, as well as the reasons for such debarment;

"(B) request that appropriate investigations be made and sanctions invoked in accordance with applicable law and policy; and

"(C) request that the State or local agency or authority keep the Office fully and currently informed with respect to any actions taken in response to the request.

"(6) The Office shall, upon written request and payment of a reasonable charge to defray the cost of complying with such request, furnish a current list of any providers barred from participating in the program under this chapter, including the minimum period of time remaining under the terms of each provider's debarment.

"(g)(1) The Office may not make a determination under subsection (b) or (c) adverse to a provider of health care services or supplies until such provider has been given written notice and an opportunity for a hearing on the record. A provider is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the provider in any such hearing.

"(2) Notwithstanding section 8912, any person adversely affected by a final decision under paragraph (1) may obtain review of such decision in the United States Court of Appeals for the Federal Circuit. A written petition requesting that the decision be modified or set aside must be filed within 60 days after the date on which such person is notified of such decision.

"(3) Matters that were raised or that could have been raised in a hearing under paragraph (1) or an appeal under paragraph (2) may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

"(h) A civil action to recover civil monetary penalties or assessments under subsection (c) shall be brought by the Attorney General in the name of the United States, and may be brought in the United States district court for the district where the claim involved was presented or where the person subject to the penalty resides. Amounts recovered under this section shall be paid to the Office for deposit into the Employees Health Benefits Fund.

“(i) The Office shall prescribe regulations under which, with respect to services or supplies furnished by a debarred provider to a covered individual during the period of such provider’s debarment, payment or reimbursement under this chapter may be made, notwithstanding the fact of such debarment, if such individual did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved shall take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.”

Regulations.

(b) **CHAPTER ANALYSIS.**—The analysis for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8902 the following:

“8902a. Debarment and other sanctions.”

SEC. 102. APPLICABILITY; PRIOR CONDUCT.

5 USC 8902a
note.
Contracts.

(a) **APPLICABILITY.**—The amendments made by this title shall be effective with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the date of the enactment of this Act.

(b) **PRIOR CONDUCT NOT TO BE CONSIDERED.**—In carrying out section 8902a of title 5, United States Code, as added by this title, no debarment, civil monetary penalty, or assessment may be imposed under such section based on any criminal or other conduct occurring before the beginning of the first calendar year which begins after the date of the enactment of this Act.

TITLE II—PROVISIONS RELATING TO TEMPORARY CONTINUATION OF COV- ERAGE FOR CERTAIN INDIVIDUALS

SEC. 201. AUTHORITY TO CONTINUE COVERAGE.

(a) **AUTHORITY.**—

(1) **IN GENERAL.**—Chapter 89 of title 5, United States Code, is amended by inserting after section 8905 the following:

“§ 8905a. Continued coverage

“(a) Any individual described in paragraph (1) or (2) of subsection (b) may elect to continue coverage under this chapter in accordance with the provisions of this section.

“(b) This section applies with respect to—

“(1) any employee who—

“(A) is separated from service, whether voluntarily or involuntarily, except that if the separation is involuntary, this section shall not apply if the separation is for gross misconduct (as defined under regulations which the Office of Personnel Management shall prescribe); and

“(B) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract); and

“(2) any individual who—

“(A) ceases to meet the requirements for being considered an unmarried dependent child under this chapter;

“(I) there is no basis under subsection (b) or (c) for continuing the debarment; and

“(II) there are reasonable assurances that the types of actions which formed the basis for the original debarment have not recurred and will not recur; or

“(ii) notwithstanding any provision of subparagraph (A), terminate the debarment of a provider, pursuant to an application filed by such provider before the end of the minimum debarment period, if the Office determines that—

“(I) based on the conduct of the applicant, the requirements of subclauses (I) and (II) of clause (i) have been met; and

“(II) early termination under this clause is warranted based on the fact that the provider is the sole community provider or the sole source of essential specialized services in a community, or other similar circumstances.

State and local
governments.

“(5) The Office shall—

“(A) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of a provider barred from participation in the program under this chapter of the fact of the debarment, as well as the reasons for such debarment;

“(B) request that appropriate investigations be made and sanctions invoked in accordance with applicable law and policy; and

“(C) request that the State or local agency or authority keep the Office fully and currently informed with respect to any actions taken in response to the request.

Records.

“(6) The Office shall, upon written request and payment of a reasonable charge to defray the cost of complying with such request, furnish a current list of any providers barred from participating in the program under this chapter, including the minimum period of time remaining under the terms of each provider's debarment.

“(g)(1) The Office may not make a determination under subsection (b) or (c) adverse to a provider of health care services or supplies until such provider has been given written notice and an opportunity for a hearing on the record. A provider is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the provider in any such hearing.

“(2) Notwithstanding section 8912, any person adversely affected by a final decision under paragraph (1) may obtain review of such decision in the United States Court of Appeals for the Federal Circuit. A written petition requesting that the decision be modified or set aside must be filed within 60 days after the date on which such person is notified of such decision.

“(3) Matters that were raised or that could have been raised in a hearing under paragraph (1) or an appeal under paragraph (2) may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

“(h) A civil action to recover civil monetary penalties or assessments under subsection (c) shall be brought by the Attorney General in the name of the United States, and may be brought in the United States district court for the district where the claim involved was presented or where the person subject to the penalty resides. Amounts recovered under this section shall be paid to the Office for deposit into the Employees Health Benefits Fund.

“(B) on the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered under a health benefits plan under this chapter as a member of the family of an employee or annuitant; and

“(C) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract).

Regulations.
Contracts.

“(c)(1) The Office shall prescribe regulations and provide for the inclusion of appropriate terms in contracts with carriers to provide that—

“(A) with respect to an employee who becomes (or will become) eligible for continued coverage under this section as a result of separation from service, the separating agency shall, before the end of the 30-day period beginning on the date as of which coverage (including any temporary extensions of coverage) would otherwise end, notify the individual of such individual’s rights under this section; and

Children and
youth.

“(B) with respect to a child of an employee or annuitant who becomes eligible for continued coverage under this section as a result of ceasing to meet the requirements for being considered a member of the employee’s or annuitant’s family—

“(i) the employee or annuitant may provide written notice of the child’s change in status (complete with the child’s name, address, and such other information as the Office may by regulation require)—

“(I) to the employee’s employing agency; or

“(II) in the case of an annuitant, to the Office; and

“(ii) if the notice referred to in clause (i) is received within 60 days after the date as of which the child involved first ceases to meet the requirements involved, the employing agency or the Office (as the case may be) must, within 14 days after receiving such notice, notify the child of such child’s rights under this section.

“(2) In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Office by regulation prescribes) must be made—

“(A) in the case of an individual seeking continued coverage based on a separation from service, before the end of the 60-day period beginning on the later of—

“(i) the effective date of the separation; or

“(ii) the date the separated individual receives the notice required under paragraph (1)(A); or

“(B) in the case of an individual seeking continued coverage based on a change in circumstances making such individual ineligible for coverage as an unmarried dependent child, before the end of the 60-day period beginning on the later of—

“(i) the date as of which such individual first ceases to meet the requirements for being considered an unmarried dependent child; or

“(ii) the date such individual receives notice under paragraph (1)(B)(ii);

except that if a parent fails to provide the notice required under paragraph (1)(B)(i) in timely fashion, the 60-day period under this subparagraph shall be based on the date under clause (i), irrespective of whether or not any notice under paragraph (1)(B)(ii) is provided.

“(d)(1)(A) An individual receiving continued coverage under this section shall be required to pay currently into the Employees Health Benefits Fund, under arrangements satisfactory to the Office, an amount equal to the sum of—

“(i) the employee and agency contributions which would be required in the case of an employee enrolled in the same health benefits plan and level of benefits; and

“(ii) an amount, determined under regulations prescribed by the Office, necessary for administrative expenses, but not to exceed 2 percent of the total amount under clause (i).

“(B) Payments under this section to the Fund shall—

“(i) in the case of an individual whose continued coverage is based on such individual's separation, be made through the agency which last employed such individual; or

“(ii) in the case of an individual whose continued coverage is based on a change in circumstances referred to in subsection (c)(2)(B), be made through—

“(I) the Office, if, at the time coverage would (but for this section) otherwise have been discontinued, the individual was covered as the child of an annuitant; or

“(II) if, at the time referred to in subclause (I), the individual was covered as the child of an employee, the employee's employing agency as of such time.

“(2) If an individual elects to continue coverage under this section before the end of the applicable period under subsection (c)(2), but after such individual's coverage under this chapter (including any temporary extensions of coverage) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1)) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

“(3)(A) An individual making an election under subsection (c)(2)(B) may, at such individual's option, elect coverage either as an individual or, if appropriate, for self and family.

“(B) For the purpose of this paragraph, members of an individual's family shall be determined in the same way as would apply under this chapter in the case of an enrolled employee.

“(C) Nothing in this paragraph shall be considered to limit an individual making an election under subsection (c)(2)(A) to coverage for self alone.

“(e)(1) Continued coverage under this section may not extend beyond—

“(A) in the case of an individual whose continued coverage is based on separation from service, the date which is 18 months after the effective date of the separation; or

“(B) in the case of an individual whose continued coverage is based on ceasing to meet the requirements for being considered an unmarried dependent child, the date which is 36 months after the date on which the individual first ceases to meet those requirements, subject to paragraph (2).

“(2) In the case of an individual who—

“(A) ceases to meet the requirements for being considered an unmarried dependent child;

“(B) as of the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered as the child of a former employee receiving continued coverage under this section based on the former employee's separation from service; and

“(C) so ceases to meet the requirements referred to in subparagraph (A) before the end of the 18-month period beginning on the date of the former employee’s separation from service,

extended coverage under this section may not extend beyond the date which is 36 months after the separation date referred to in subparagraph (C).

regulations.

“(f)(1) The Office shall prescribe regulations under which, in addition to any individual otherwise eligible for continued coverage under this section, and to the extent practicable, continued coverage may also, upon appropriate written application, be afforded under this section—

“(A) to any individual who—

“(i) if subparagraphs (A) and (C) of paragraph (10) of section 8901 were disregarded, would be eligible to be considered a former spouse within the meaning of such paragraph; but

“(ii) would not, but for this subsection, be eligible to be so considered; and

“(B) to any individual whose coverage as a family member would otherwise terminate as a result of a legal separation.

“(2) The terms and conditions for coverage under the regulations shall include—

“(A) consistent with subsection (c), any necessary notification provisions, and provisions under which an election period of at least 60 days’ duration is afforded;

“(B) terms and conditions identical to those under subsection (d), except that contributions to the Employees Health Benefits Fund shall be made through such agency as the Office by regulation prescribes;

“(C) provisions relating to the termination of continued coverage, except that continued coverage under this section may not (subject to paragraph (3)) extend beyond the date which is 36 months after the date on which the qualifying event under this subsection (the date of divorce, annulment, or legal separation, as the case may be) occurs; and

“(D) provisions designed to ensure that any coverage pursuant to this subsection does not adversely affect any eligibility for coverage which the individual involved might otherwise have under this chapter (including as a result of any change in personal circumstances) if this subsection had not been enacted.

“(3) In the case of an individual—

“(A) who becomes eligible for continued coverage under this subsection based on a divorce, annulment, or legal separation from a person who, as of the day before the date of the divorce, annulment, or legal separation (as the case may be) was receiving continued coverage under this section for self and family based on such person’s separation from service; and

“(B) whose divorce, annulment, or legal separation (as the case may be) occurs before the end of the 18-month period beginning on the date of the separation from service referred to in subparagraph (A),

extended coverage under this section may not extend beyond the date which is 36 months after the date of the separation from service, as referred to in subparagraph (A).”.

(2) **TABLE OF SECTIONS.**—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8905 the following:

a. Continued coverage.”.

OPTION TO CONVERT TO A NONGROUP CONTRACT AFTER COVERED COVERAGE ENDS.—Section 8902(g) of title 5, United States Code, is amended by striking “or former spouse” each place it appears and inserting “former spouse, or person having continued coverage under section 8905a of this title”.

CHANGE OF COVERAGE BASED ON CHANGE IN FAMILY STATUS.—Section 8905(e) of title 5, United States Code, is amended by striking “former spouse” and inserting “former spouse, or person having continued coverage under section 8905a of this title”.

OPEN SEASON.—Section 8905(f) of title 5, United States Code, is amended—

(1) by striking “or former spouse” each place it appears and inserting “former spouse, or person having continued coverage under section 8905a of this title”; and

(2) by adding at the end the following:

(A) In addition to any informational requirements otherwise applicable under this chapter, the regulations shall include provisions to ensure that each employee eligible to enroll in a health benefits plan under this chapter (whether actually enrolled or not) is notified in writing as to the rights afforded under section 8905a of this title.

(B) Notification under this paragraph shall be provided by the employing agencies at an appropriate point in time before each open season under paragraph (1) so that employees may be aware of their rights under section 8905a of this title when making enrollment decisions during such period.”.

202. TECHNICAL AND CONFORMING AMENDMENTS.

Sections 8902(j), 8902(k)(1), and 8909(d) of title 5, United States Code, are amended by striking “or former spouse” each place it appears and inserting “former spouse, or person having continued coverage under section 8905a of this title”.

Section 8903(1) of title 5, United States Code, is amended—

(1) by striking “or former spouses,” and inserting “former spouses, or persons having continued coverage under section 8905a of this title,”; and

(2) by striking “or former spouse.” and inserting “former spouse, or person having continued coverage under section 8905a of this title.”.

Section 8905(d) of title 5, United States Code, is amended to read as follows:

(1) If an employee, annuitant, or other individual eligible to enroll in a health benefits plan under this chapter has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for himself and family, or each spouse may enroll as an individual. However, an individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of a family.”.

203. APPLICABILITY.

5 USC 8902 note.

IN GENERAL.—The amendments made by this title shall apply with respect to—

contracts.

(1) any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the end of the 9-month period beginning on the date of the enactment of this Act; and

(2) any qualifying event occurring on or after the first day of the first calendar year beginning after the end of the 9-month period referred to in paragraph (1).

(b) DEFINITION.—For the purpose of this section, the term “qualifying event” means any of the following events:

(1) A separation from Government service.

(2) A divorce, annulment, or legal separation.

(3) Any change in circumstances which causes an individual to become ineligible to be considered an unmarried dependent child under chapter 89 of such title.

TITLE III—HEALTH INSURANCE COVERAGE FOR TEMPORARY EMPLOYEES

SEC. 301. HEALTH INSURANCE COVERAGE FOR TEMPORARY EMPLOYEES.

(a) IN GENERAL.—Chapter 89 of title 5, United States Code, is amended by inserting after section 8906 the following new section:

regulations.

“§ 8906a. Temporary employees

“(a)(1) The Office of Personnel Management shall prescribe regulations to provide for offering health benefits plans to temporary employees (who meet the requirements of paragraph (2)) under the provisions of this chapter.

“(2) To be eligible to participate in a health benefits plan offered under this section a temporary employee shall have completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

“(b) Notwithstanding the provisions of section 8906—

“(1) any temporary employee enrolled in a health benefits plan under this section shall have an amount withheld from the pay of such employee, as determined by the Office of Personnel Management, equal to—

“(A) the amount withheld from the pay of an employee under the provisions of section 8906; and

“(B) the amount of the Government contribution for an employee under section 8906; and

“(2) the employing agency of any such temporary employee shall not pay the Government contribution under the provisions of section 8906.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 89 of title 5, United States Code, is amended by inserting after the item relating to section 8906 the following:

“8906a. Temporary employees.”.

(c) REGULATIONS.—Section 8913(b) of title 5, United States Code, is amended—

(1) in paragraph (2) by striking out “or” at the end thereof;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof a semicolon and “or”; and

(3) by adding at the end thereof the following new paragraph:

“(4) an employee who is employed on a temporary basis and is eligible under section 8906a(a).”.

EXPIRATION DATE.—The amendments made by this section shall expire 120 days after the date of enactment of this section.

5 USC 8906a
note.

IV—PROVISIONS RELATING TO CONTRIBUTIONS BY JUSTICES AND JUDGES TO THE THRIFT SAVINGS FUND

CONTRIBUTIONS BY JUSTICES AND JUDGES TO THE THRIFT SAVINGS FUND.

GENERAL.—Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end thereof the following section:

Contributions by justices and judges

A justice or judge of the United States as defined by section 371 (a) or (b) of title 28 may elect to contribute an amount of such individual's salary received by a justice or judge who has retired under section 371 (a) or (b) or section 372(a) of title 28, United States Code, to the Thrift Savings Fund. Basic pay does not include an amount of salary received by a justice or judge who has retired under section 371 (a) or (b) or section 372(a) of title 28, United States Code.

Election may be made under paragraph (1) only during the period provided under section 8432(b) for individuals subject to the provisions of this title: *Provided, however,* That a justice or judge elects to make the first such election within 60 days of the effective date of the election.

Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply to justices and judges making contributions to the Thrift Savings Fund.

The amount contributed by a justice or judge shall not exceed 1 percent of basic pay.

Contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

Section 8433(b) of this title applies with respect to elections to any justice or judge who retires under section 371 (a) or (b) or section 372(a) of title 28. Retirement under section 371 (a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII of chapter 84 of this title. Section 8433(d) of this title applies to any justice or judge who elects to contribute under this section without having met the age and service requirements set forth in section 371(c) of title 28.

Any amount contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Thrift Savings Fund or the Securities Investment Fund established under section 8432(d) of this title.

The provisions of section 8351(b)(7) of this title shall govern the contributions of spouses of justices or judges contributing to the Thrift Savings Fund under this section."

FORMING AMENDMENT.—The table of sections for chapter 5, United States Code, is amended by inserting after the entry for section 8440 the following:

"Contributions by justices and judges."

Tennessee.

SEC. 402. DESIGNATION OF LEWIS E. MOORE, SR., POST OFFICE BUILDING.

The United States Post Office Building located at 525 Royal Parkway in Nashville, Tennessee, is designated as the "Lewis E. Moore, Sr., Post Office Building". Any reference to such building in a law, rule, map, document, record, or other paper of the United States shall be considered to be a reference to the "Lewis E. Moore, Sr., Post Office Building".

Approved November 14, 1988.

LEGISLATIVE HISTORY—H.R. 5102:

HOUSE REPORTS: No. 100-917 (Comm. on Post Office and Civil Service).
CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 16, considered and passed House.

Oct. 14, considered and passed Senate, amended.

Oct. 19, House concurred in Senate amendment.

Joint Resolution

To designate the month of October 1988, as "National AIDS Awareness and Prevention Month".

Nov. 14, 1988

[S.J. Res. 192]

Whereas the President has declared AIDS as the number one public health enemy;

Whereas the Secretary of Health and Human Services has projected that, by the end of 1991, the cumulative total of all AIDS cases in the United States will reach 270,000 and result in nearly 180,000 deaths;

Whereas information, education, and public health measures are the Nation's primary weapons in prevention and control of the spread of AIDS;

Whereas if the AIDS epidemic is not controlled through a major national educational, informational, and public health effort, the devastating human and economic impact on society will be unprecedented in modern times;

Whereas informing and educating the American public, including the youth of today, about AIDS is crucial to preventing and controlling the spread of AIDS: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of October 1988 is designated as "National AIDS Awareness and Prevention Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate activities.

TITLE I—NATIONAL MINING HALL OF FAME AND MUSEUM

SECTION 101. The National Mining Hall of Fame and Museum, organized and incorporated under the laws of Colorado, is hereby recognized as such and is granted a charter.

Corporations.
Historic
preservation.
Libraries.
36 USC 4101.

POWERS

SEC. 102. The National Mining Hall of Fame and Museum (hereafter in this title referred to as the "corporation"), shall have only those powers granted to it through its bylaws and

36 USC 4102.

articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

36 USC 4103.

SEC. 103. The objects and purposes of the corporation are those provided in its articles of incorporation including—

(1) to honor citizens, mining leaders, miners, prospectors, teachers, scientists, engineers, inventors, governmental leaders, and other individuals, who have helped to make this Nation great by their outstanding contributions to the establishment, development, advancement, or improvement of mining in the United States of America;

(2) to perpetuate the memory of such individuals and record their contributions and achievements by the erection and maintenance of such buildings, monuments, and edifices as may be deemed appropriate as a lasting memorial;

(3) to foster, promote, and encourage a better understanding of the origins and growth of mining, especially in the United States, and the part mining has played in changing the economic, social, and scientific aspects of our Nation;

(4) to establish and maintain a library and museum for collecting and preserving for posterity, the history of those honored by the corporation, together with a documentation of their accomplishments and contributions to mining, including such items as mining pictures, paintings, books, papers, documents, scientific data, relics, mementos, artifacts, and things relating to such items;

(5) to cooperate with other mining organizations which are actively engaged and interested in similar projects; and

(6) to engage in any and all activities incidental thereto or necessary, suitable, or proper for the accomplishment of any of the purposes set forth in this section.

MEMBERSHIP

36 USC 4104.

SEC. 104. Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

36 USC 4105.

SEC. 105. The board of directors of the corporation and the responsibilities thereof shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

36 USC 4106.

SEC. 106. The officers of the corporation, and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States wherein it is incorporated.

RESTRICTIONS

36 USC 4107.

SEC. 107. (a) No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such person during the life of this charter.

thing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation reimbursement for actual necessary expenses in amounts approved by the board of directors.

b) The corporation shall not make any loan to any officer, director or employee of the corporation.

c) The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner calculated to influence legislation.

d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

e) The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

f) The corporation shall retain and maintain its status as a corporation organized and incorporated under the laws of the State of Colorado.

LIABILITY

SEC. 108. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority. 36 USC 4108.

SERVICE OF PROCESS

SEC. 109. With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and the States in which it carries on its activities in furtherance of its corporate purposes. 36 USC 4109.

BOOKS AND RECORDS; INSPECTION

SEC. 110. The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, any committee having authority under the board of directors. The corporation shall keep at its principal office a record of the names and addresses of all members having the right of vote. All books and records of such corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law. 36 USC 4110.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 111. The first section of the Act entitled "An Act to provide for an audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(60) The National Mining Hall of Fame and Museum".

ANNUAL REPORT

SEC. 112. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding calendar year. Such annual report shall be submitted at the same time as the report of the audit required by section 111 of this title. The report shall not be printed as a public document. 36 USC 4111.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

36 USC 4112. SEC. 113. The right to alter, amend, or repeal this title is expressly reserved to the Congress.

DEFINITION OF "STATE"

36 USC 4113. SEC. 114. For purposes of this title, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

36 USC 4114. SEC. 115. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1954.

TERMINATION

36 USC 4115. SEC. 116. If the corporation fails to comply with any of the restrictions or other provisions of this title, the charter granted by this title shall expire.

Approved November 14, 1988.

LEGISLATIVE HISTORY—S.J. Res. 192:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 5, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-656
100th Congress

An Act

To amend the Small Business Act to reform the Capital Ownership Development Program, and for other purposes.

Nov. 15, 1988

[H.R. 1807]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Business Opportunity Development Reform Act of 1988”.

(b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Business
Opportunity
Development
Reform Act of
1988.
Disadvantaged
persons.
Contracts.
15 USC 631
note.

TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

Sec. 101. Findings and purposes.

TITLE II—PROGRAM ORGANIZATION AND PARTICIPATION STANDARDS

Sec. 201. Program admission.

Sec. 202. Time limitations.

Sec. 203. Grandfathering.

Sec. 204. Business development objectives.

Sec. 205. Business plans.

Sec. 206. Eligibility reviews.

Sec. 207. Eligibility of native Hawaiians.

Sec. 208. Termination and graduation standards.

Sec. 209. Economic disadvantage.

TITLE III—BUSINESS DEVELOPMENT

Sec. 301. Stages of program participation.

Sec. 302. Loans.

Sec. 303. Contractual assistance.

Sec. 304. Subcontracting assistance.

TITLE IV—IMPROVED MANAGEMENT AND PROGRAM INTEGRITY

Sec. 401. Political appointees.

Sec. 402. Prohibited actions and employee responsibilities.

Sec. 403. Politically motivated activities.

Sec. 404. Reports by program participants.

Sec. 405. False representations.

Sec. 406. Congressionally requested investigations.

Sec. 407. Contract performance.

Sec. 408. Data collection.

Sec. 409. Due process rights.

Sec. 410. Employee training and evaluation.

TITLE V—CONTRACT PLANNING; GOAL SETTING AND REVIEWS

Sec. 501. Planning 8(a) contract activity.

Sec. 502. Annual contracting goals.

Sec. 503. Presidential report on contracting goals.

Sec. 504. General Accounting Office report.

Sec. 505. Commission on minority business development.

TITLE VI—ADMINISTRATIVE AND TECHNICAL AMENDMENTS

Sec. 601. Relationship with other procurement programs.

Sec. 602. Indian tribe exemption.

Sec. 603. Directors of small and disadvantaged business utilization.

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

PART A—SHORT TITLE AND FINDINGS

- Sec. 701. Short title.
- Sec. 702. Findings.

PART B—DEMONSTRATION PROGRAM

- Sec. 711. Small Business Competitiveness Demonstration Program.
- Sec. 712. Enhanced small business participation goals.
- Sec. 713. Procurements procedures.
- Sec. 714. Reporting.
- Sec. 715. Test plan and policy direction.
- Sec. 716. Report to Congress.
- Sec. 717. Designated industry groups.
- Sec. 718. Definitions.

PART C—PROGRAMS RELATING TO SPECIFIC INDUSTRIES

- Sec. 721. Alternative program for clothing and textiles.
- Sec. 722. Expanding small business participating in dredging.

PART D—AMENDMENTS TO THE SMALL BUSINESS ACT

- Sec. 731. Technical amendment.
- Sec. 732. Repealer.

PART E—OTHER AMENDMENTS

- Sec. 741. Segmentation of industry category.
- Sec. 742. Definition of architectural and engineering services.

TITLE VIII—AUTHORIZATIONS, EFFECTIVE DATES, AND MISCELLANEOUS MATTERS

- Sec. 801. Regulations.
- Sec. 802. Authorizations.
- Sec. 803. Effective dates.

USC 636 note.

SEC. 2. DEFINITIONS.

For the purposes of this Act—

(1) the term "Administration" means the Small Business Administration;

(2) the term "Administrator" means the Administrator of the Small Business Administration, unless otherwise indicated;

(3) the term "disadvantaged owners" means those individuals upon whom eligibility is based for participation in the Program and the award of subcontracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(4) the term "minority owned businesses" means business concerns that are at least 51 percent owned and controlled by one or more individuals who belong to those groups described or identified pursuant to section 2(e)(1)(C) of the Small Business Act (15 U.S.C. 631(e)(1)(C));

(5) the term "Program" means the Small Business and Capital Ownership Development Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10));

(6) the term "Program Participant" means a small business concern participating in the Program; and

(7) the term "Program Participation Term" means the fixed period of time assigned to a Program Participant pursuant to section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) prior to the date of enactment of this Act.

TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. FINDINGS AND PURPOSES.

15 USC 636 note.

(a) FINDINGS.—The Congress finds that—

(1) the Capital Ownership Development Program administered by the Small Business Administration and the award of contracts pursuant to section 8(a) of the Small Business Act remain a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Federal procurement process and bringing such concerns into the nation's economic mainstream;

(2) although some progress has resulted from the Program, it has generally failed to meet its objectives, which remain as valid now as when the Program was initiated;

(3) too few concerns that have exited the Program have been prepared to compete successfully in the open marketplace on competitive procurements, and many concerns have developed an unhealthy dependency on sole-source contracts by the time they are required to leave the Program;

(4) the application and certification process for admitting new participants to the Program is inordinately lengthy and burdensome;

(5) the Administration has often not efficiently and equitably administered and managed the Program in a manner that provided clear lines of responsibility for implementing and monitoring many of the administrative duties under the Program;

(6) the Administration and some program participants have given insufficient attention and support to the business development goals of the Program and instead have focused almost entirely on the size of contract awards or the number of firms certified to participate in the Program;

(7) many Federal procuring agencies have failed to identify and offer the necessary amount of contract support in order to allow for diversification and growth of disadvantaged businesses participating in the Program;

(8) contract support as well as business development expenses have been misused both by the Administration and Program participants and have not been equitably distributed pursuant to objective criteria;

(9) the widespread perception of undue political influence in the operation and administration of the Program has significantly contributed to the Program's poor image and has deterred utilization of the Program by socially and economically disadvantaged concerns and by Federal procuring agencies; and

(10) it is imperative that increased competition and other substantial reforms be accomplished in the Program in order to promote the Congressionally mandated business development objectives and purposes.

(b) PURPOSES.—The purposes of this Act therefore are to—

(1) affirm that the Capital Ownership Development Program and the section 8(a) authority shall be used exclusively for business development purposes to help small businesses owned and controlled by the socially and economically disadvantaged

to compete on an equal basis in the mainstream of the American economy;

(2) affirm that the measure of success of the Capital Ownership Development Program, and the section 8(a) authority, shall be the number of competitive firms that exit the Program without being unreasonably reliant on section 8(a) contracts and that are able to compete on an equal basis in the mainstream of the American economy;

(3) ensure that program benefits accrue to individuals who are both socially and economically disadvantaged;

(4) increase the number of small businesses owned and controlled by such individuals from which the United States may purchase products and services (including construction work); and

(5) ensure integrity, competence, and efficiency in the administration of business development services and the Federal contracting opportunities made available to eligible small businesses.

TITLE II—PROGRAM ORGANIZATION AND PARTICIPATION STANDARDS

SEC. 201. PROGRAM ADMISSION.

(a) **ELIGIBILITY OF PARTICIPANTS.**—Section 7(j)(11) of the Small Business Act (15 U.S.C. 636(j)(11)) is amended by striking out “(11)” and inserting in lieu thereof “(11)(A)” and by adding the following new subparagraphs:

“(B) Except as provided in section 602(d) of the Business Opportunity Development Reform Act of 1988, any individual upon whom eligibility is based pursuant to section 8(a)(4), shall be permitted to assert such eligibility for only one small business concern. Notwithstanding the provisions of the preceding sentence, no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

“(C) No concern, previously eligible for the award of contracts pursuant to section 8(a), shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

“(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a). In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

“(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the “Division”) that shall be made part of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to such Associate Administrator. The Division shall establish field offices within such regional offices of the Administra-

tion as may be necessary to perform efficiently its functions and responsibilities.

“(F) Subject to the provisions of section 8(a)(9), the functions and responsibility of the Division are to—

“(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 8(a);

“(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

“(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

“(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 8(a);

“(v) make a request for the initiation of termination or graduation proceedings, as appropriate, with the Associate Administrator for Minority Small Business and Capital Ownership Development;

“(vi) decide protests from applicants that have been denied program admission;

“(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 8, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

“(viii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (H) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

“(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

“(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

“(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program participants providing the same or similar items or services.

“(H) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be

Reports.

relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

“(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

“(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

“(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.”.

Employment
and
unemployment.

(b) OUTREACH.—Section 8(a)(10) of the Small Business Act (15 U.S.C. 637(a)(10)) is amended by adding at the end thereof the following: “Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.”.

SEC. 202. TIME LIMITATIONS.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is further amended by adding the following new paragraph:

“(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

“(A) no more than four years may be spent in the developmental stage of Program Participation; and

“(B) no more than five years may be spent in the transitional stage of Program Participation.”.

SEC. 203. GRANDFATHERING.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is amended by adding the following new subparagraph:

“(D)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

“(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

“(II) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this paragraph plus eighteen months.

“(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.”.

C. 204. BUSINESS DEVELOPMENT OBJECTIVES.

a) PROGRAM PURPOSES.—(1) Section 2(c)(2)(B) of the Small Business Act (15 U.S.C. 631(c)(2)(B)) is amended to read as follows:

“(B) It is therefore the purpose of the programs authorized by section 7(j) of this Act to—

“(i) foster business ownership and development by individuals in groups that own and control little productive capital; and

“(ii) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.”.

(2) Section 2(e)(2) (15 U.S.C. 631(e)(2)) of the Act is amended to read as follows:

“(2) It is therefore the purpose of section 8(a) to—

“(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

“(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and management assistance as may be necessary; and

“(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.”.

b) TECHNICAL AMENDMENT.—Section 2(c)(2)(A)(v) of the Act is amended by striking “sole source”.

C. 205. BUSINESS PLANS.

a) IN GENERAL.—Section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) is amended to read as follows:

“(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which sets forth the Program Participant’s specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).”.

b) CONTENTS OF PLAN.—Section 7(j)(10) of such Act is further amended—

(1) by striking subparagraph (C),

(2) by redesignating subparagraph (D) (as added by section 203 of this Act) as subparagraph (C), and

(3) by adding after subparagraph (C), as redesignated, the following new subparagraph:

“(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the “plan”) as described in clause (ii) of this subparagraph for review by the business opportunity specialist assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan

submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

"(ii) The plans submitted under this subparagraph shall include the following:

"(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

"(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede small business concerns from receiving contracts other than those awarded under section 8(a).

"(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

"(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation).

"(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 8(a).

"(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I).

"(iv) Each Program Participant shall annually forecast its needs for contract awards under section 8(a) for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

“(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the requirements of subparagraph (I),

“(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

“(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

“(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.”.

SEC. 206. ELIGIBILITY REVIEWS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is further amended by adding at the end thereof the following new subparagraph:

“(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 8(a) may be suspended or terminated pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

“(ii) Except as provided under section 602 of the Business Opportunity Development Reform Act of 1988, no award shall be made pursuant to section 8(a) to other than a small business concern.”.

SEC. 207. ELIGIBILITY OF NATIVE HAWAIIANS.

(a) **IN GENERAL.**—Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding the following new paragraph:

“(15) For purposes of this subsection, the term ‘Native Hawaiian organizations’ means any community service organization serving Native Hawaiians in the State of Hawaii which—

“(A) is a not-for-profit organization chartered by the State of Hawaii,

“(B) is controlled by Native Hawaiians, and

“(C) whose business activities will principally benefit such Native Hawaiians.”.

(b) **TECHNICAL AMENDMENT.**—Section 2(e)(1)(C) of such Act (15 U.S.C. 631(e)(2)(C)) is amended by inserting “Native Hawaiian Organizations,” after “Asian Pacific Americans.”.

(c) **CLARIFICATION OF DEFINITION OF “SOCIAL AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERN”.**—Paragraph (4) of section 8(a) of such Act (15 U.S.C. 637(a)(4)) is amended to read as follows:

“(4)(A) For purposes of this section, the term ‘socially and economically disadvantaged small business concern’ means any small business concern which meets the requirements of subparagraph (B) and—

“(i) which is at least 51 per centum owned by—

“(I) one or more socially and economically disadvantaged individuals,

“(II) an economically disadvantaged Indian tribe, or

“(III) an economically disadvantaged Native Hawaiian organization, or

“(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by—

“(I) one or more socially and economically disadvantaged individuals,

“(II) an economically disadvantaged Indian tribe, or

“(III) an economically disadvantaged Native Hawaiian organization.

“(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

“(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

“(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

“(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).”.

SEC. 208. TERMINATION AND GRADUATION STANDARDS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), is further amended by adding at the end thereof the following new subparagraphs:

“(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern—

“(i) voluntarily elects not to continue participation;

“(ii) participates in the Program for a period in excess of the time limits prescribed by paragraph (15);

“(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 8(a)(9); or

“(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 8(a)(9).

“(F) For the purposes of sections 7(j) and 8(a), the terms ‘terminated’ or ‘termination’ shall mean the total denial

“(F) For the purposes of this Act, sections 7(j) and 8(a), the terms ‘terminated’ or ‘termination’ shall mean the total denial or suspension of assistance provided pursuant to this paragraph or section 8(a) prior to the graduation of the participating small business concern pursuant to subparagraph (H) or the expiration of the maximum program participation in terms prescribed by paragraph (15). An action for termination shall be based upon good cause, including—

“(i) the failure by such concern to maintain its eligibility for Program participation;

“(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a);

“(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

“(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

“(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or

“(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 16. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

Fraud.
Law
enforcement
and crime.

“(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9).

“(H) For the purposes of sections 7(j) and 8(a) the term ‘graduated’ or ‘graduation’ means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 8(a).”

C. 209. ECONOMIC DISADVANTAGE

(a) ECONOMIC DISADVANTAGE.—Section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) is amended—

(1) by striking out “(6)” and inserting in lieu thereof “(6)(A)”, and

(2) by adding at the end the following new subparagraphs: “(B) Each Program Participant shall annually submit to the Administration—

“(i) a personal financial statement for each disadvantaged owner;

“(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

“(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

“(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the

Records.

Administration has reason to believe that the standards to establish economic disadvantage pursuant to (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

“(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 7(j)(10)(H) subject to the right to a hearing as provided for under paragraph (9).

“(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant’s business plan.

“(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant’s business, the Administration shall—

“(I) initiate a proceeding to terminate the Program Participant pursuant to section 7(j)(10)(F), subject to the right to a hearing under paragraph (9); or

“(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

“(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

“(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

“(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.”

(b) **CERTIFICATION.**—Section 8(a)(4) of the Small Business Act (15 U.S.C. 637(a)(4)(A)) is further amended by adding the following new subparagraph:

“(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.”

TITLE III—BUSINESS DEVELOPMENT

C. 301. STAGES OF PROGRAM PARTICIPATION.

(a) IN GENERAL.—Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is amended by adding at the end thereof the following new paragraph:

“(12)(A) The Administration shall segment the Capital Ownership Development Program into two stages: a development stage; and a transitional stage.

“(B) The developmental stage of program participation shall be designed to assist the concern to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

“(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.”.

(b) DEVELOPMENTAL STAGE OF PROGRAM PARTICIPATION.—Such section is further amended by adding at the end thereof the following new paragraph:

“(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12:

“(A) Contract support pursuant to section 8(a).

“(B) Financial assistance pursuant to section 7(a)(20).

“(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled ‘An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes’, approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section (8)(a) and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of \$10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

“(D) A maximum of five exemptions from the requirements of the Act entitled ‘An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works’, approved August 24, 1935 (49 Stat. 793), which exemptions shall apply only to contracts awarded pursuant to section 8(a), except that, such exemptions may be granted under this subparagraph only if—

“(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

“(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of

Termination
date.

persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

Termination
date.

"(iii) the contract to which it pertains does not exceed \$3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1992.

Regulations.

"(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such financial assistance may be made without regard to section 18(a), shall be made by way of reimbursement to the training provider, and shall have such adjustments as may be necessary to provide for overpayments or underpayments. For purposes of this subparagraph the term 'training provider' shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under the Job Training Partnership Act (29 U.S.C. 1501 et seq.). The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

"(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

"(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

"(iii) no more than \$2,500 shall be made available for any one employee or potential employee;

"(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

"(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

“(vi) the training to be financed may take place either at such concern’s facilities or at those of the training provider; and

“(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

Records.

“(F) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern’s term of participation in the Program and for one year thereafter.

Science and technology.
Real property.

“(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

“(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

“(I) Transitional management business planning training and technical assistance.

“(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(c) TRANSITIONAL STAGE OF PROGRAM PARTICIPATION.—Such section is further amended by adding at the end the following new paragraph:

“(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

SEC. 302. LOANS.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end thereof the following new paragraph:

“(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 8(a). Such assistance may be provided only if the Administration determines that—

Banks and banking.

“(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

"(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

"(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

"(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

"(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed \$750,000.

"(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

"(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

"(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

"(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

"(II) No direct financing may be made unless it is shown that a participation is unavailable.

"(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

"(i) that is subordinated by its terms to all other borrowings of the issuer;

"(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

"(iii) the term of which is not more than twenty-five years; and

"(iv) the principal on which amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually."

SEC. 303. CONTRACTUAL ASSISTANCE.

(a) **COMPETITIVE BUSINESS MIX.**—Section 7(j)(10) of the Small Business Act (15 U.S.C. 363(j)(10)), is further amended by adding at the end thereof the following new subparagraph:

"(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as 'business activity targets'). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a

reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

"(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii).

Regulations.

"(iii) The regulations referred to in clause (ii) shall:

"(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 8(a), expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;

"(II) require a Program Participant to attain its business activity targets;

"(III) provide that, before the receipt of any contract to be awarded pursuant to section 8(a), the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

"(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

"(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 8(a); such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a); except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 8(a)(9)."

(b) **COMPETITIVE THRESHOLDS.**—Section 8(a)(1) of the Act (15 U.S.C. 637(a)(1)) is amended by adding at the end thereof the following new subparagraph:

"(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible program participants if—

"(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

"(II) the anticipated award price of the contract (including options) will exceed \$5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and \$3,000,000 (including options) in the case of all other contract opportunities.

“(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.”

(c) **CONTRACT MATCHING.**—Section 8(a) of the Act (15 U.S.C. 637(a)), is further amended by adding at the end thereof the following new paragraph:

“(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

“(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

“(ii) the award of such contract would be consistent with the Program Participant’s business plan; and

“(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 7(j)(10)(I).

“(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.”

(d) **CONTRACT SELECTION APPEALS AND DOCUMENTATION.**—Section 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)(1)(A)) is amended by inserting after the sentence ending “the Administrator.” the following: “Not later than 5 days from the date the Administration is notified of a procurement officer’s adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer’s adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator’s request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator’s request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement.”

(e) **FAIR MARKET PRICE.**—Section 8(a)(3) of the Act (15 U.S.C. 637(a)(3)) is amended to read as follows:

“(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this

section shall, when practicable, participate in any negotiation of terms and conditions of such contract.

B)(i) For purposes of paragraph (1) a 'fair market price' shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the offeror to the Administration.

(iii) The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to the potential offeror (other than the Administration).

D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (4)."

OPTIONS.—(1) The Small Business Administration shall make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and submitted to such Administration for approval.

(2) Within sixty days after the date of enactment of this Act, the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in contracts previously awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) with the contractor that was initially awarded such contract.

(3) During the period of time described in paragraph (2), such agencies shall refrain from procuring such requirements from alternative sources except that, no delay may be incurred pursuant to paragraph (4) that would cause substantial harm to a public interest.

(4) The Small Business Administration shall take appropriate actions, including publication in the Federal Register, to advise all business concerns and Federal agencies of the requirements of this subsection.

15 USC 637 note.

Federal
Register,
publication.

(5) The Administration shall, to the maximum extent practicable, minimize delay, eliminate excess regulation, and require only such paperwork as may be necessary to effect the orderly and efficient management of the Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) and the award of contracts pursuant to section 8(a) of such Act (15 U.S.C. 637(a)).

(g) **STANDARD INDUSTRIAL CLASSIFICATION CODE LIMITATIONS.**—Section 8(a)(7) of the Act (15 U.S.C. 637(a)(7)) is amended by—

(1) inserting “(A)” after “(7)”; and

(2) adding the following new subparagraph:

“(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.”

(h) **NON-MANUFACTURER RULE.**—Section 8(a) of the Act (15 U.S.C. 637(a)) is further amended by adding the following new paragraph:

“(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 15 solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

“(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

“(i) be primarily engaged in the wholesale or retail trade;

“(ii) be a regular dealer, as defined pursuant to section 35(a) of title 41, United States Code (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 7(j)(13)(C); and

“(iii) represent that it will supply the product of a domestic small business manufacturer or processor, except that, the Administrator may waive the application of the clause, as it pertains to the furnishing of a product manufactured or processed by a small business, for any class of products for which there are no small business manufacturers or processors in the Federal market.”

SEC. 304. SUBCONTRACTING ASSISTANCE.

(a) **ENCOURAGING COMPLIANCE.**—Section 8(d)(4) of the Small Business Act (15 U.S.C. 637(d)(4)) is amended by adding at the end thereof the following new subparagraph:

“(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

“(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer’s final decision regarding the imposition of damages and the amount thereof. The final decision of a contracting officer regarding the contractor’s obligation to pay such damages, or

the amounts thereof, shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

“(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

“(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

“(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

“(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.”

(b) **LIQUIDATED DAMAGES CLAUSE.**—The contract clause required by section 8(d)(4)(F) of the Small Business Act (as added by subsection (a)) shall be made part of the Federal Acquisition Regulation and promulgated pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

15 USC 637 note.

TITLE IV—IMPROVED MANAGEMENT AND PROGRAM INTEGRITY

SEC. 401. STATUS OF THE ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT.

(a) **IN GENERAL.**—In Section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)) is amended by inserting immediately after “Associate Administrator for Minority Small Business and Capital Ownership Development” the following: “who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee”.

(b) **CAREER POSITION.**—The position of Associate Administrator for Minority Small Business and Capital Ownership Development referred to in paragraph (1) of section 4(b) of the Act shall be a career reserved position.

15 USC 633 note.

SEC. 402. PROHIBITED ACTIONS AND EMPLOYEE RESPONSIBILITIES.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding at the end thereof the following new paragraph:

“(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant certified during such person’s term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 7(j)(10), or section 7(a)(20).

“(B) The activities and transactions prohibited by subparagraph (A) include—

“(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

“(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

“(iii) the receipt of any other benefit or right that may be an incident of ownership.

"(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

"(ii) The employees referred to in clause (i) are—

"(I) regional administrators;

"(II) district directors;

"(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

"(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 7(j)(10); and

"(V) such other employees as the Administrator may deem appropriate.

Law
enforcement and
crime.

"(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

"(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812)."

SEC. 403. POLITICALLY MOTIVATED ACTIVITIES.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding at the end the following:

"(19)(A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 7(j), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited or directed.

"(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action, imposed by the Administrator, which may consist of separation from service, reduction in grade, suspension, or reprimand.

"(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

"(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law."

SEC. 404. REPORTS BY PROGRAM PARTICIPANTS.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding at the end thereof the following new paragraph:

"(20)(A) Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall semiannually report to their assigned business opportunity specialist the following:

listing of any agents, representatives, attorneys, consultants, and other parties (other than employing compensation to assist in obtaining a Federal or such Program Participant.

the amount of compensation received by any person under clause (i) during the relevant reporting period and portion of the activities performed in return for such action.

Business Opportunity Specialist shall promptly review such report to the Associate Administrator for Minority Business and Capital Ownership Development. Any report of suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

Failure to submit a report pursuant to the requirements of this section and applicable regulations shall be considered as the initiation of a termination proceeding pursuant to 101(F)."

REPRESENTATIONS.

FOR MISREPRESENTATION.—Section 16(d) of the Small Business Act (15 U.S.C. 645(d)) is amended to read as follows: "Whoever misrepresents the status of any concern or person as a 'small business concern' or 'small business concern owned and controlled by socially and economically disadvantaged individuals', shall be liable for oneself or another any—

(1) a contract to be awarded pursuant to section 9 or 15; or

(2) a contract to be awarded pursuant to section 8(a); or

(3) a contract that is to be included as part or all of a goal or objective in a subcontracting plan required pursuant to section 8(b); or

(4) a contract to be awarded as a result, or in connection with, of any other provision of Federal law that specifies in section 8(d) for a definition of program eligibility.

Whoever violates paragraph (1) shall—

(A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed in the Small Business Act of 1958 (31 U.S.C. 611 et seq.);

(C) be subject to suspension and debarment as specified in section 87.4 of title 48, Code of Federal Regulations (or any successor regulation) on the basis that such misrepresentation constitutes a lack of business integrity that seriously and directly impairs the present responsibility to perform any contract awarded by the Federal Government or a subcontract under the contract; and

(D) be ineligible for participation in any program or activity authorized under the authority of this Act or the Small Business Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 5 years."

REPRESENTATION OF SECTION 7 COMPLIANCE.—Section 16 of the Small Business Act (15 U.S.C. 645) is amended by adding at the end the following new subsection:

“(f) Whoever falsely certifies past compliance with the requirements of section 7(j)(10)(I) of this Act shall be subject to the penalties prescribed in subsection (d).”.

SEC. 406. CONGRESSIONALLY REQUESTED INVESTIGATIONS.

(e) **INSPECTOR GENERAL INVESTIGATIONS.**—Section 10(e) of the Small Business Act (15 U.S.C. 639(e)) is amended by—

(1) inserting “and the Inspector General of the Administration” immediately after “Administration”, and

(2) adding the following new paragraph:

“(2) The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of section 7(j) or 8(a). Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing of the disposition of the matter by such office.”.

SEC. 407. CONTRACT PERFORMANCE.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is further amended by adding the following new paragraph:

“(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

“(B) The Administrator may, as a matter of discretion and on a nondelegable basis, waive the requirements of subparagraph (A) if requested to do so prior to the actual relinquishment of ownership or control. In addition to the requirement of the preceding sentence, a waiver may be given only if any of the following conditions exist:

“(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

“(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

“(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

“(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

“(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

“(I) such concern has exited the Capital Ownership Development Program;

“(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

“(III) the disadvantaged owners will maintain control of daily business operations.

“(C) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

“(D) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.”.

SEC. 408. DATA COLLECTION.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is further amended by adding the following new paragraph:

“(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

“(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following: Reports.

“(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of the effective date of this paragraph.

“(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 8(a).

“(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

“(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and

“(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

“(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

“(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

“(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered ‘good cause’ for the initiation of a termination proceeding pursuant to section 7(j)(10)(F).”.

SEC. 405. FALSE REPRESENTATIONS.

(a) **PENALTY FOR MISREPRESENTATION.**—Section 16(d) of the Small Business Act (15 U.S.C. 645(d)) is amended to read as follows:

“(d)(1) Whoever misrepresents the status of any concern or person as a ‘small business concern’ or ‘small business concern owned and controlled by socially and economically disadvantaged individuals’, in order to obtain for oneself or another any—

“(A) prime contract to be awarded pursuant to section 9 or 15;

“(B) subcontract to be awarded pursuant to section 8(a);

“(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d); or

“(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall be subject to the penalties and remedies described in paragraph (2).

“(2) Any person who violates paragraph (1) shall—

“(A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;

“(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812);

“(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and

“(D) be ineligible for participation in any program or activity conducted under the authority of this Act or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.”.

(b) **MISREPRESENTATION OF SECTION 7 COMPLIANCE.**—Section 16 of the Small Business Act (15 U.S.C. 645) is amended by adding at the end thereof the following new subsection:

gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 8(a), and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

“(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

“(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 8(a).

“(vii) The total dollar value of contracts and options awarded pursuant to section 8(a), at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

“(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.”

SEC. 409. DUE PROCESS RIGHTS.

Paragraph (9) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(9)) is amended to read as follows:

“(9)(A) Subject to the provisions of subparagraph (E), the Administrator, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5, United States Code.

“(B) The actions referred to in subparagraph (A) are—

“(i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);

“(ii) a termination pursuant to section 7(j)(10)(F);

“(iii) a graduation pursuant to section 7(j)(10)(H); and

“(iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

“(C) The Administrator's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

“(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

“(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

“(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;

“(ii) is untimely filed;

“(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

“(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

“(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.”

SEC. 410. EMPLOYEE TRAINING AND EVALUATION.

15 USC 636 note.

(a) **TRAINING REQUIREMENTS FOR BUSINESS SPECIALISTS.**—(1) In each Small Business Administration field office responsible for assisting one or more Program Participants there shall be a position designated as a Business Opportunity Specialist. To the maximum extent practicable the Administration shall assure that an adequate number of Business Opportunity Specialists are assigned to each district office to carry out the responsibilities of sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a)) and to assist Program Participants.

(2) The Administration shall take such actions as may be appropriate to ensure that any person employed as a Business Opportunity Specialist receives adequate periodic training to assure such employee is capable of assisting Program Participants to fully utilize the Program and to meet the requirements of the Small Business Act, as amended by this Act.

(b) **PILOT PROGRAM.**—(1) Within 180 days after the effective date of this subsection the Administrator shall designate three regions of the Administration to conduct a pilot program pursuant to the provisions of this subsection. The designated regions shall contain approximately 30 per centum of the total number of Program Participants as of the time of designation.

(2) A Business Opportunity Specialist employed in a Region designated pursuant to paragraph (1), in addition to other assigned duties and responsibilities, shall—

(A) conduct contract negotiations on behalf of the Administration for contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) when performance will be rendered by one or more firms in such Specialist's assigned portfolio;

(B) facilitate and otherwise assist such firms in negotiating for the receipt of contracts to be let pursuant to such section.

(3) The Administration shall take such actions as may be appropriate to train and qualify such Specialists to perform the negotiations required pursuant to paragraph (2).

(4) To the extent practicable, the Administrator shall ensure that the performance appraisal system applicable to a Business Opportunity Specialist employed in a region designated pursuant to paragraph (1) affords substantial recognition to how well such Specialist's assigned portfolio of concerns participating in the program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) are achieving competitiveness and furthering the business development purposes of the program.

(5) The Administration shall establish personnel positions for Business Opportunity Specialists employed in the regions designated pursuant to paragraph (1) that are classified at a grade level of the General Schedule that are sufficient, in the opinion of the Administrator, to attract and retain highly qualified personnel.

(c) **REPORT AND PILOT PROGRAM TERMINATION.**—(1) Within 120 days after the termination of the pilot program conducted pursuant to subsection (b), the Administration shall issue a report to the Committees on Small Business of the Senate and of the House of

Representatives on the effectiveness of the pilot. Such report shall contain such recommendations for administrative or legislative change as may be appropriate.

(2) The pilot program conducted pursuant to subsection (a) shall be terminated three years after the date on which the Committees on Small Business of the Senate and of the House of Representatives receive written notification from the Administrator that the pilot is in full operation in each of the three designated pilot regions.

TITLE V—CONTRACT PLANNING; GOAL SETTING AND REVIEWS

SEC. 501. PLANNING SECTION 8(a) CONTRACT ACTIVITY.

Section 8(a)(12) of the Small Business Act (15 U.S.C. 637(a)(12)) is amended to read as follows:

“(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

“(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

“(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

“(i) The approximate number of individual contract opportunities (and the number of opportunities within a class)

“(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

“(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

“(iv) The activity responsible for the award and administration of the contract.

the head of each executive agency subject to the provisions of paragraph (C) shall within 10 days of completion furnish such to—

the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for agency; and

the Administrator.

the information reported pursuant to (D) may be limited to items and services for which there are substantial annual

forecasts shall be available to small business concerns.”.

ANNUAL CONTRACTING GOALS.

15(g) of the Small Business Act (15 U.S.C. 644(g)) is

by striking out “The head” and inserting in lieu thereof the head”;

by redesignating paragraphs (1) and (2) as subparagraphs (B), respectively, and

by adding at the beginning the following new paragraph:

President shall annually establish Government-wide goals for prime contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. The Government-wide goal for participation by small business concerns shall be established at not less than 20 percent of the total value of all prime contracts awarded each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contracts awarded each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that for that agency, the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts let by such agency. The Administrator and the Administrator of the Office of Federal Contract Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contracts awarded to all agencies meet or exceed the annual Government-wide goal established by the President pursuant to this section.”.

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PRESIDENTIAL REPORT ON CONTRACTING GOALS.

15(h) of the Small Business Act (15 U.S.C. 644(h)) is

by striking out “(h)” and inserting in lieu thereof “(h)(1)”, by striking out the last sentence of subsection (h)(1), and by adding at the end thereof the following new paragraph:

The Administration shall annually compile and analyze the data submitted by the individual agencies pursuant to paragraph (1) and submit them to the President. The Administration’s report to the President shall include the following:

The Government-wide goals for participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged and the progress in attaining such goals.

“(B) The goals in effect for each agency and the agency's performance in attaining such goals.

“(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administration) to achieve the goals in the succeeding fiscal year.

“(D) The number and dollar value of contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals through—

“(i) noncompetitive negotiation,

“(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

“(iii) competition restricted to small business concerns, and

“(iv) unrestricted competitions,

for each agency and on a Government-wide basis.

“(E) The number and dollar value of subcontracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

“(F) The number and dollar value of prime contracts and subcontracts awarded to women-owned small business enterprises.

“(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(a)).”

USC 636 note.

SEC. 504. GENERAL ACCOUNTING OFFICE REPORT.

(a) IN GENERAL.—(1) The Comptroller General of the United States shall conduct a review of the operation of the Minority Small Business and Capital Ownership Development Program authorized by section 7(j)(10) (15 U.S.C. 636(j)(10)) and the contract assistance provided pursuant to section 8(a) (15 U.S.C. 637(a)) of the Small Business Act commencing within 180 days of the enactment of this Act and concluding on September 30, 1991.

(2) The review shall report on the implementation of the provisions of this Act by the Small Business Administration and the various executive departments and agencies providing contracting opportunities to the Program. In addition to such other matters as the Comptroller General may choose to include, the review shall report on the implementation of the Act's provisions relating to—

(A) the certification of Program Participants by the Administration;

(B) the development and maintenance of business development plans required by this Act;

(C) the amount and types of business management and technical assistance provided to Program Participants, including transition management assistance, and the criteria by which the effectiveness of such assistance is measured by the Administration;

(D) the type and amount of financial assistance provided through the programs authorized by the Small Business Act and the Small Business Investment Act of 1958;

(E) Program Participants' dependence on contracts awarded noncompetitively under the authority of section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and the rate of increase in the percentage of competitively awarded contracts in the firms' business mix as Program Participants approach graduation;

(F) the competitive award of contracts within the Program, determining the number, dollar value, and source selection method used for the various contract opportunities required to be awarded competitively and those for which competition was discretionary;

(G) the noncompetitive award of contracts to Program Participants; the effect on the distribution of Program awards among individual Program Participants; and Program Participants located in each of the several States; and the Administration's use of the authority to direct contracts to Program Participants in the interest of maintaining equitable contract distributions;

(H) delay in the award of contracts flowing from protests, either of a prospective awardee's continued Program eligibility or the conduct of a competition restricted to Program Participants;

(I) limitations on the transfer of contracts to a Program Participant incident to transferring ownership and control of the business;

(J) reporting by Program Participants concerning the use of consultants and other non-employees to assist in obtaining Federal contracts; and

(K) data collection and data management by the Administration relating to the Program.

(3) The Comptroller General shall prepare a report summarizing the findings of the review described in paragraph (2), and make such recommendations for the improved implementation of this Act as may be appropriate. The report shall be transmitted to the Committees on Small Business of the Senate and House of Representatives by February 1, 1992.

SEC. 505. COMMISSION ON MINORITY BUSINESS DEVELOPMENT.

15 USC 636 note.

(a) **ESTABLISHMENT.**—There is established a Commission to be known as the "Commission on Minority Business Development" hereinafter in this title referred to as the "Commission").

(b) **DUTIES.**—(1) The Commission shall—

(A) review and conduct an assessment of the operations of all Federal programs intended to promote and foster the development of minority owned businesses to ascertain whether the purposes and objectives of such program are being realized. Such review and assessment shall include, among other things, an evaluation of the issues described in this subsection;

(B) review and assess the overall effectiveness of the Small Business and Capital Ownership Development Program established pursuant to 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) including—

(i) the procedure whereby the Administration certifies concerns pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)), including, the average time for the processing of applications, the criteria for program admission, and the geographic and industrial distribution of new program entrants;

(ii) the developmental assistance provided under the Small Business Act to such concerns and whether such assistance has been of benefit to program participants and whether modifications, additions, or deletions to such assistance should be provided to further the purposes of the program; such evaluation shall also include an analysis of whether program benefits, including contract awards, have been equitably distributed among all program participants and whether all regions of the Nation have benefitted from the program in proportion to their respective numbers of minority owned businesses;

(iii) the system established by this Act for competing contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and whether improved methods could be used, consistent with the purposes of the program, to better impart competitive skills, prevent program abuse, and promote the equitable distribution of awards;

(iv) the appropriate maximum term for program participation; such evaluation shall take into account relevant industry data, the developmental cycles of particular industries, and the financial, managerial and technological needs of such concerns to become competitive; a study shall be conducted relating to the fixed program term allowed under statute and the advisability of adopting alternative terms based on Standard Industrial Classification Codes or other economic indices;

(v) the data collection system maintained by the Administration to gather information relative to the program and whether such system is producing reliable data needed for effective management and control of the program;

(vi) various techniques that may be used to increase the participation rate of Federal agencies (as defined pursuant to section 224 of Public Law 95-507) in the program, to further the compliance of contractors with section 8(d) of the Small Business Act (15 U.S.C. 637(d)), and to properly coordinate the program with the operations of other Federal programs and activities designed to assist small business concerns owned and controlled by the socially and economically disadvantaged; and

(vii) the laws and regulatory procedures designed to protect against program abuse and if additional safeguards are necessary to protect the integrity of the program;

(C) review and assess the programs described in subparagraph (B) and whether the congressional purposes for such programs are being achieved in a manner that is consistent with the intent of other programs established under Federal law to promote the development of small business concerns; and

(D) review and assess—

(i) the policies and procedures of major procurement agencies with respect to setting goals by contractors (and subcontractors) under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) to encourage subcontracting opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(ii) the performance of a sample of contractors (and subcontractors) in attaining the goals established in their

subcontracting plans and in making greater use of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(iii) the extent to which liquidated damages have been assessed under subcontracting plans and whether the inclusion of a liquidated damage clause furthers the purposes of the subcontracting program; and

(iv) the special circumstances of contractors providing commercial products.

(2)(A) Based upon its review, the Commission shall issue an interim report and a final report to the Congress and to the President.

Reports.

(B) The interim report shall be issued by December 31, 1990, and shall detail the methodology pursued to evaluate each issue described in subparagraphs (A) and (B) of paragraph (1). The Commission shall also indicate those changes in law or regulation, if any, that should be considered immediately in order to protect the integrity of the Program and further the legitimate interests of Program Participants.

(C) The final report shall be issued within 1 year after the interim report and shall contain detailed findings, conclusions, and recommendations for such changes in law or regulation as may be necessary to further the growth and development of minority businesses. Such findings, conclusions, and recommendations shall be stated for each issue described under each such subparagraph.

(c) MEMBERSHIP.—(1) The Commission shall be composed of fourteen members to be selected as follows:

(A)(i) The Administrator of the Small Business Administration, or a designee of the Administrator.

(ii) The Under Secretary of Defense for Acquisition.

(iii) The Secretary of Commerce (or such Secretary's Deputy).

(iv) The Secretary of Transportation (or such Secretary's Deputy).

(B) Two members shall be representatives of trade or business associations whose membership are primarily small business concerns owned and controlled by socially and economically disadvantaged individuals.

(C) Four members shall be chief executive officers, or individuals of similar position, from major domestic corporations two of which shall be minority businesses.

(D) Four members shall be from leading educational institutions in business administration and management, two of which shall be from historically Black colleges or universities and minority institutions (as defined by the Secretary of Education pursuant to the General Education Provisions Act (20 U.S.C. 1221 et seq.).

(2) Appointments under subparagraphs (B), (C), and (D) of paragraph (1) shall be made by the President. No more than one-half of the members appointed under each such subparagraph shall be of the same political party. No appointed member shall be an officer or employee of the Federal Government nor of the Congress.

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(3) Members appointed under such subparagraphs shall be appointed for the term of the Commission except if any such appointee becomes an officer or employee of the Federal Government or of the Congress, such individual may continue as a member of the Commission for not longer than the thirty-day period beginning on the date such individual becomes such an officer or employee.

(4) A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(5) Members of the Commission shall serve without pay for such membership, except members of the Commission shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Commission, in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(6)(A) Four members of the Commission shall constitute a quorum for the receipt of testimony and other evidence.

(B) A majority of the Commission shall constitute a quorum for the approval of a report submitted pursuant to paragraph 2.

(C) The Commission shall meet not less than four times a year. Meetings shall be at the call of the Chairperson.

(7) The Chairperson and Vice Chairperson of the Commission shall be designated by the President and term of office for such Chairperson and Vice Chairperson shall be at the discretion of the President.

(d) **DIRECTOR AND STAFF.**—(1)(A) The Commission shall have a Director who shall be appointed by the Chairperson. Upon recommendation by the Director, the Chairperson may appoint and fix the pay of four additional personnel.

(B) The Director and staff of the Commission may be appointed without regard to section 531(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(3) Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title without regard to section 3341 of title 5 of the United States Code.

(e) **POWERS.**—(1) The Commission may, for the purpose of carrying out this title sit and act at such times and places, hold such hearings, take such testimony, receive such evidence, and consider such information, as the Commission considers appropriate. The Commission may administer oaths or affirmations for the receipt of such testimony.

(2) Any member or person within the employ of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) Except as otherwise prohibited by law, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this Act. Upon the request of the Chairperson of the Commission, the head of such department or agency shall promptly furnish such information to the Commission.

(4) The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States. Mail.

(5) The Administrator of the General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request. In addition, the Administrator shall, as appropriate, provide to the Commission, upon request, access to and use of such Federal facilities as may be necessary for the conduct of its business.

(f) **TERMINATION.**—The Commission shall cease to exist on the date that it transmits its final report to the Congress and to the President.

(g) **AUTHORIZATION.**—There are authorized to be appropriated such sums as may be necessary to carry out this title and they may remain available until the Commission is terminated. New spending authority or authority to enter contracts as authorized in the section shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

(h) **REPEALER.**—Subparagraph (A) of section 7(j)(3) of the Small Business Act (15 U.S.C. 636(j)(3)(A)) is repealed.

TITLE VI—ADMINISTRATIVE AND TECHNICAL AMENDMENTS

SEC. 601. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS.

Section 15(m) of the Small Business Act (15 U.S.C. 644(m)) is amended to read as follows:

“(m)(1) Each agency subject to the requirements of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note) shall, when implementing such requirements—

“(A) establish policies and procedure that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

“(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 8(a).

“(2) All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall—

“(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

“(B) report to their immediate supervisors all instances of noncompliance with such requirement; and

“(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note).”.

SEC. 602. INDIAN TRIBE EXEMPTIONS.

15 USC 637 note.

(a) **COMPETITIVE THRESHOLDS.**—Section 8(a)(16) of the Small Business Act as added by section 303 of this Act, shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to para-

graphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a) (4) and (13)).

(b) **JOINT VENTURES.**—The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to a joint venture notwithstanding the size status of such joint venture if—

(1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a) (4) and (13))); and

(2) such Program Participant:

(A) owns 51 per centum or more of such joint venture;

(B) is located on the reservation of such tribe;

(C) performs most of its activities on such reservation; and

(D) employs members of such tribe for at least 50 per centum of its total workforce.

(c) **LIMITATIONS.**—A Program Participant, as a party to a joint venture shall receive no more than two contracts due solely to the provisions of subsection (b).

(d) **ELIGIBILITY OF MORE THAN ONE CONCERN.**—The Administration may permit more than one small business concern owned by a socially and economically disadvantaged Indian tribe to be eligible for assistance pursuant to this section 7(j)(10) and section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)) if—

(1) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(2) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(e) **SUNSET.**—Subsection (b) shall cease to be effective after September 30, 1991.

SEC. 603. DIRECTORS OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.

USC 644.

Section 15(k) of the Small Business Act is amended by—

(1) amending paragraph (3) to read as follows:

“(3) be responsible only to, and report directly to, the head of such agency or to the deputy of such head, except that the director for the Office of the Secretary of Defense shall be responsible only to, and report directly to, such Secretary or the Secretary’s designee;”;

(2) striking “and” at the end of paragraph (7);

(3) striking the period at the end of paragraph (8) and inserting in lieu thereof “, and”; and

(4) adding at the end thereof the following new paragraph:

“(9) make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), or section 8(a) of this Act or section 1207 of Public Law 99-661. Such recommendations shall be made with due regard to the requirements of subsection (m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.”.

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Small Business
Competitiveness
Demonstration
Program Act of
1988.
15 USC 644 note.

PART A—SHORT TITLE AND FINDINGS

SEC. 701. SHORT TITLE.

This title may be cited as the "Small Business Competitiveness Demonstration Program Act of 1988".

SEC. 702. FINDINGS.

The Congress finds that—

(1) many small business concerns have repeatedly demonstrated their ability to fulfill a broad range of Government requirements for products, services (including research, development, technical, and professional services), and construction, through the Federal procurement process;

(2) various Congressional mandated reforms to the Federal procurement process, including the Competition in Contracting Act of 1984, the Defense Procurement Reform Act of 1984, and the Small Business and Federal Procurement Competition Enhancement Act of 1984, were designed to eliminate obstacles to competition and thereby to broaden small business participation; and

(3) traditional agency efforts to implement the mandate for small business participation in a fair proportion of Federal procurements as required by section 15(a) of the Small Business Act have resulted in—

(A) a concentration of procurement contract awards in a limited number of industry categories, often dominated by small business concerns, through the use of set-asides, for the purpose of assuring the attainment of the agency's overall small business contracting goals; and

(B) inadequate efforts to expand small business participation in agency procurements of products or services which have historically demonstrated low rates of small business participation despite substantial potential for expanded small business participation.

PART B—DEMONSTRATION PROGRAM

15 USC 644 note.

SEC. 711. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) **ESTABLISHMENT.**—There is established a Small Business Competitiveness Demonstration Program (hereafter referred to as "the Program") pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413) to provide for the testing of innovative procurement methods and procedures. The Administrator of Federal Procurement Policy shall designate the Administrator of the Small Business Administration as the executive agent responsible for conducting the test.

(b) **PURPOSES.**—The purposes of the Program are to demonstrate whether—

(1) the competitive capabilities of small business firms in certain industry categories will enable them to successfully compete on an unrestricted basis for Federal contracting opportunities,

(2) the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration, can expand small business participation in Federal contracting opportunities which have been historically low, despite adequate numbers of qualified small business contractors in the economy, and

(3) expanded use of full and open competition, as specified by the Competition in Contracting Act of 1984 (10 U.S.C. 2302(3) and 41 U.S.C. 403(7)), adversely affects small business participation in certain industry categories, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

(c) **PROGRAM TERM.**—The Program shall be conducted over a period of 4 years, beginning on January 1, 1989, and ending on December 31, 1992.

(d) **APPLICATION.**—The Program shall apply to contract solicitations for the procurement of services in industry groups designated in section 717.

SEC. 712. ENHANCED SMALL BUSINESS PARTICIPATION GOALS.

(a) **ENHANCED GOALS FOR DESIGNATED INDUSTRY GROUPS.**—Each participating agency shall establish an annual small business participation goal that is 40 percent of the dollar value of the contract awards for each of the designated industry groups. In attaining its small business participation goal for contract awards for each of the designated industry groups, each participating agency shall make a good faith effort to assure that emerging small business concerns are awarded not less than 15 percent of the dollar value of the contract awards for each of the designated industry groups.

(b) **SPECIAL ASSISTANCE FOR EMERGING SMALL BUSINESS CONCERNS.**—

(1) **SMALL BUSINESS RESERVE.**—During the term of the Program, all contract opportunities in the industry groups designated in section 718 shall be reserved for exclusive competition among emerging small business concerns in accordance with the competition standard specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)), if the estimated award value of the contract is equal to or less than the greater of:

(A) \$25,000, or

(B) such larger dollar amount established pursuant to paragraph (2).

(2) **ADJUSTMENTS TO THE SMALL BUSINESS RESERVE.**—If the goal of awarding emerging small business concerns 15 percent of the total dollar value of contracts in a designated industry category is determined not to have been attained, upon the review of award data conducted in accordance with subsection (d)(1) of this section, the Administrator for Federal Procurement Policy, to ensure attainment of such goal, shall prescribe, on a semi-annual basis, appropriate adjustments to the dollar threshold for contract opportunities in such designated industry category below which competition shall be conducted exclusively among emerging small business concerns.

(3) **SMALL BUSINESS SMALL PURCHASE RESERVE.**—The requirements of this subsection dealing with the reserve amount shall

apply notwithstanding the amount specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)).

(4) **EXCLUSION OF MODIFICATIONS TO EXISTING CONTRACTS ABOVE THE SMALL PURCHASE THRESHOLD.**—Any modification or follow-on award to a contract having an initial award value in excess of \$25,000 shall not be subject to the limitations on competition required by this subsection.

(5) **TARGETING INDUSTRY CATEGORIES WITH LIMITED SMALL BUSINESS PARTICIPATION.**—(1) Concurrent with the term of the Small Business Competitiveness Demonstration Program, the head of each participating agency shall implement a program to expand small business participation in the agency's acquisition of selected products and services in 10 industry categories which have historically demonstrated low rates of small business participation. The products and services to be targeted for the small business participation expansion program and the special goals for such program, shall be developed in conjunction with the Administrator of the Small Business Administration, and shall be subject to the requirements of section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

(2) The products or services selected for the small business participation expansion program shall be drawn from industry categories that:

(A) are the recipients of substantial purchases by the Federal Government;

(B) have less than 10 percent of such annual purchases made from small business concerns; and

(C) have significant amounts of small business productive capacity that have not been utilized by the Government.

(3) In developing its small business participation expansion program, each participating agency shall:

(A) prepare, and furnish to the Administration, a detailed, time-phased strategy (with incremental numerical goals); and

(B) encourage and promote joint ventures, teaming agreements and other similar arrangements, which permit small business concerns to effectively compete for contract solicitations for which an individual small business concern would lack the requisite capacity or capability needed to establish responsibility for the award of a contract.

(6) **MONITORING AGENCY PERFORMANCE.**—

(1) Participating agencies shall monitor the attainment of their small business participation goals on a quarterly basis. The initial review by each participating agency shall be completed not later than June 30, 1989, based on the data for the period January 1 through March 31, 1989. Thereafter, each review shall be based on the aggregate of contract award data from the 4 quarters preceding the date of the review for which data is available.

(2) All awards to small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) shall be counted toward attainment of the goals specified in subsection (a) of this section.

(3) Modifications to a participating agency's solicitation practices, pursuant to section 713(b), shall be made at the beginning of the quarter following each review, if the rate of small business participation is less than 40 percent of the contract awards.

SEC. 713. PROCUREMENT PROCEDURES.

(a) **FULL AND OPEN COMPETITION.**—Except as provided in subsections (b) and (c), each contract opportunity with an anticipated value of \$25,000 or more for the procurement of services from firms in the designated industry groups (unless set aside pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 1207 of the National Defense Authorization Act for Fiscal Year 1987) shall be solicited on an unrestricted basis during the term of the Program, if the participating agency has attained its small business participation goal pursuant to section 712(a). Any regulatory requirements which are inconsistent with this provision shall be waived.

(b) **RESTRICTED COMPETITION.**—If a participating agency has failed to attain its small business participation goal under section 712(a), subsequent contracting opportunities, which are in excess of the reserve thresholds specified pursuant to section 712(b) shall be solicited through a competition restricted to eligible small business concerns pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)) to the extent necessary for such agency to attain its goal. Such modifications in the participating agency's solicitation practices shall be made as soon as practicable, but not later than the beginning of the quarter following completion of the review made pursuant to section 712(d) indicating that changes to solicitation practices are required. Such participating agency shall comply with the requirements of subsection (a) upon determining that its contract awards to small business concerns meet the required goals.

(c) **RELATIONSHIP WITH THE COMPETITION IN CONTRACTING ACT OF 1984.**—Subsections (a) and (b) shall not be construed to supersede the application of the Competition in Contracting Act of 1984 (98 Stat. 1175).

SEC. 714. REPORTING.

(a) **AWARDS OF \$25,000 OR LESS.**—During the term of the Small Business Competitiveness Demonstration Program, each award of \$25,000 or less made by a participating agency for the procurement of a service in any of the designated industry categories shall be reported to the Federal Procurement Data Center in the same manner as if the purchase were in excess of \$25,000.

(b) **SUBCONTRACTING ACTIVITY.**—The Administrator for Federal Procurement Policy shall devise and implement, during the term of the Program, a simplified system to test the collection, reporting, and monitoring of data on subcontract awards to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals for—

- (1) services in each of the designated industry groups; and
- (2) products or services from industry categories selected for participation in the small business participation expansion program, pursuant to section 712(c).

(c) **SIZE OF SMALL BUSINESS CONCERNS.**—During the term of the Program, each participating agency shall collect data pertaining to the size of the small business concern receiving any award for the procurement of—

- (1) services in each of the designated industry groups; and
- (2) products or services from industry categories selected for participation in the small business participation expansion program, pursuant to section 712(d).

SEC. 715. TEST PLAN AND POLICY DIRECTION.

(a) **TEST PLAN.**—The Administrator for Federal Procurement Policy may further specify the manner and conduct of the test activities required by this title through a test plan issued pursuant to section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 33).

(b) **POLICY DIRECTION.**—The Administrator for Federal Procurement Policy, in cooperation with the Administrator of the Small Business Administration, shall issue a policy directive (which shall be binding on all participating agencies) to ensure consistent Government-wide implementation of this title in the Federal Acquisition Regulation, title 48 of the Code of Federal Regulations, issued pursuant to the Office of Federal Procurement Policy Act.

SEC. 716. REPORT TO CONGRESS.

(a) **IN GENERAL.**—Within 180 days after fiscal year 1991 data is available from the Federal Procurement Data Center, the Administrator for Federal Procurement Policy shall report the results of the Small Business Competitiveness Demonstration Program to the Committees on Small Business of the Senate and House of Representatives, to the Committee on Governmental Affairs of the Senate, and to the Committee on Government Operations of the House of Representatives. The views of the Administrator of the Small Business Administration shall be included in the report.

(b) **ANALYSIS OF PROGRAM.**—The report shall include a section prepared by the Administrator of the Small Business Administration specifying the results of the intensive goaling and management program conducted to expand small business participation in agency acquisitions of selected products and services.

(c) **RECOMMENDATIONS.**—To the extent the results of the Program demonstrate sufficiently high small business participation based on unrestricted contract competition in the designated industry groups, the report shall include recommendations (if appropriate) for changes in legislation or modifications of procurement regulations aimed at increasing reliance on unrestricted competition if high rates of small business participation in the Federal procurement market can be maintained.

SEC. 717. DESIGNATED INDUSTRY GROUPS.

(a) **IN GENERAL.**—For the purposes of participation in this Program, the designated industry groups are—

- (1) construction (excluding dredging);
- (2) refuse systems and related services;
- (3) architectural and engineering services (including surveying and mapping); and
- (4) non-nuclear ship repair.

(b) **CONSTRUCTION.**—Construction shall include contract awards assigned one of the standard industrial classification codes that comprise—

- (1) Major Group 15 (Building Construction—General Contractors and Operative Builders),
- (2) Major Group 16 (Construction Other Than Building Construction—General Contractors and Dredging), and
- (3) Major Group 17 (Construction—Special Trade Contractors).

(c) **REFUSE.**—Refuse systems and related services shall include contract awards assigned to standard industrial classification code 4212 or 4953.

(d) **ARCHITECTURAL AND ENGINEERING.**—Architectural and engineering services (including surveying and mapping) shall include contract awards assigned to standard industrial classification code 7389 (if identified as pertaining to mapping services), 8711, 8712, or 8713.

(e) **ALTERNATIVE DATA.**—In the event that standard industrial classification codes are not assigned to individual contract awards reported to the Federal Procurement Data Center by January 1, 1989, the Program may be conducted on the basis of the product and service codes used to report data pertaining to such contract awards, related to the maximum practicable extent to the standard industrial classification code for the service being provided by the contractor.

SEC. 718. DEFINITIONS.

(a) **DESIGNATED INDUSTRY GROUPS.**—“Designated industry groups” means the groups specified in section 717 for participation in the Small Business Competitiveness Demonstration Program.

(b) **EMERGING SMALL BUSINESS CONCERN.**—“Emerging small business concern” means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

(c) **PARTICIPATING AGENCY.**—“Participating agency” shall have the same meaning as the term “executive agency” in section (4)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)). The Administrator for Federal Procurement Policy is authorized to specify as part of the Program test plan the list of executive agencies designated to participate in the Program, which shall include:

- (1) the Department of Agriculture,
- (2) the Department of Defense (with the Department of the Army, the Department of the Navy, the Department of the Air Force, and the defense agencies reporting separately),
- (3) the Department of Energy,
- (4) the Department of Health and Human Services,
- (5) the Department of Transportation,
- (6) the Environmental Protection Agency,
- (7) the General Services Administration (the Public Building Service reporting separately),
- (8) the National Aeronautics and Space Administration, and
- (9) the Veterans Administration.

The Administrator for Federal Procurement Policy is authorized to require any participating agencies to report separately in any manner deemed appropriate to enhance the attainment of the test activities authorized by this title.

(d) **SMALL BUSINESS PARTICIPATION.**—“Small business participation” shall include the aggregate dollar value of every procurement contract award made to a small business concern, without regard to whether such award was based on restricted or unrestricted competition, or was made on a sole source basis.

(e) **STANDARD INDUSTRIAL CLASSIFICATION CODE.**—“Standard industrial classification code” means a four digit code assigned to an industry category in the Standard Industrial Classification Manual

published by the Office of Management and Budget in effect on the date of enactment of this Act.

PART C—ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES

15 USC 644 note.

SEC. 721. ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES.

(a) **ESTABLISHMENT.**—Subject to the requirements of subsection (b), of the total dollar amount of contracts for each standard industrial classification code for clothing and textiles awarded by the Defense Logistics Agency for each of the fiscal years 1989, 1990, and 1991:

(1) To the maximum extent practicable, 50 percent shall not be restricted by the size status of the competing business concerns.

(2) To the maximum extent practicable, 50 percent shall be made available for award pursuant to—

(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(B) section 1207 of the National Defense Authorization Act for Fiscal Year 1987; and

(C) section 15(a) of the Small Business Act (15 U.S.C. 644(a)), if the criteria for such awards are met pursuant to part 19.5 (Set-Asides for Small Business) of title 48, Code of Federal Regulations, as in effect on September 1, 1988.

(b) **COMPUTATION.**—In order to calculate the percent limitation established pursuant to subsection (a), the Department may establish, after consultation with the Small Business Administration, major groupings of standard industrial classification codes that are closely related and apply such limitations to such groupings.

SEC. 722. EXPANDING SMALL BUSINESS PARTICIPATION IN DREDGING.

(a) **ESTABLISHMENT.**—During fiscal years 1989, 1990, 1991, and 1992, the Secretary of the Army (hereafter in this section referred to as the “Secretary”) shall conduct a program to expand the participation of small business concerns and emerging small business concerns in contracting opportunities for dredging.

(b) **ENHANCED GOALS.**—Of the total dollar value of contracts for dredging, the Department of the Army (hereafter in this section referred to as the “Department”) shall make every reasonable effort to award to small business concerns:

(1) 20 percent during fiscal year 1989, including 5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(2) 25 percent during fiscal year 1990, including 7.5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

(3) 30 percent during fiscal year 1991, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns; and

(4) 30 percent during fiscal year 1992, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns.

Subcontract awards may be counted towards the attainment of such goals, provided that there is available a system for the collection of data relating to the award of subcontracts under dredging contracts awarded by the Department.

(c) **CONTRACT AWARD PROCEDURES.**—(1) Except as provided in paragraphs (2) and (3), the Department shall solicit and award contracts for dredging through full and open competition in conformity with section 2304 of title 10, United States Code, section 15 of the Small Business Act (15 U.S.C. 644), and the implementing procurement regulations promulgated in conformity with section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405). Nothing herein shall impair the award of contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 1207 of the National Defense Authorization Act for Fiscal Year 1987.

(2) Contracting opportunities for dredging shall be reserved for competition among emerging small business concerns if their estimated award value is below an amount to be specified by the Administrator for Federal Procurement Policy (hereafter in this section referred to as the "Administrator"), upon the recommendation of the Secretary. Such reserve amount shall be established by the Administrator at the start of the program at a level which can reasonably be expected to result in the Department attaining the applicable participation goal for emerging small business concerns. Such reserve threshold shall be reviewed by the Secretary and adjusted by the Administrator to the extent necessary on a semi-annual basis beginning after the end of the second quarter of fiscal year 1989 on the basis of the aggregate of contract awards for the four fiscal year quarters preceding the date of the review.

(3) The Secretary shall restrict for competition among all eligible small business concerns such additional contracting opportunities for dredging in such numbers and at such estimated award values as can reasonably be expected to result in the Department attaining the applicable participation goal for small business concerns generally.

(d) **ACQUISITION STRATEGIES TO FOSTER SMALL BUSINESS PARTICIPATION.**—(1) In attaining the goals for participation by small business concerns and emerging small business concerns, the Secretary is encouraged to:

(A) specify contract requirements and contractual terms and conditions that are conducive to competition by small business concerns and emerging small business concerns, consistent with the mission or program requirements of the Department;

(B) joint ventures, teaming agreements, and other similar arrangements, which permit small business concerns to effectively compete for contract opportunities for which an individual firm would lack the requisite capacity or capability needed to establish responsibility for the award of a contract; and

(C) subcontracting through plans negotiated and enforced pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or solicitation requirements specifying minimum percentages of subcontracting for the purpose of determining the responsiveness of an offer.

(2) During the term of the program, data shall be collected pertaining to the actual size of the firm receiving an award as a small business concern or an emerging small business concern.

(e) **SIZE STANDARD.**—For the purposes of the program established by subsection (a), the size standard pertaining to standard industrial classification code 1629 (Dredging and Surface Cleanup Activities) in effect on October 1, 1988 shall remain in effect until September 30, 1990.

(f) **REPORTS.**—

(1) The Secretary shall furnish a report to the Committees on Small Business of the Senate and House of Representatives, the Administrator of the Small Business Administration, and the Administrator for Federal Procurement Policy within 120 days after September 30, 1992.

(2) Interim reports shall be submitted annually within 90 days after the close of each of the fiscal years 1989, 1990, and 1991. The Secretary may include recommendations regarding adjustments to the Department's participation goals for small business concerns and emerging small business concerns and to the applicable size standard, if the Secretary determines that such goals cannot reasonably be attained from the pool of firms meeting the current size standard.

(3) The Secretary of Defense shall issue reports to the Congress on the operations of the program established pursuant to this section. Such reports shall detail the effects of the program on the mobilization base and on small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Interim reports shall be submitted every six months during the term of the program to the Committees on Armed Services and Small Business of the House of Representatives and the Senate.

PART D—AMENDMENTS TO THE SMALL BUSINESS ACT

SEC. 731. TECHNICAL AMENDMENT.

Section 809(a)(2) of title VIII, division A of Public Law 100-180 (101 Stat. 1130, December 4, 1987) is amended by striking out "October 1, 1988" and inserting in lieu thereof "October 1, 1989".

15 USC 644 note.

SEC. 732. REPEALER.

Paragraphs (2) through (5) of subsection 3(a) of the Small Business Act (15 U.S.C. 632(a) (2)-(5)) are repealed. Any numerical size standard that pertains to any of the designated industry groups, and that is in effect on September 30, 1988, shall remain in effect for the duration of the Program.

15 USC 632 note.

PART E—OTHER AMENDMENTS

SEC. 741. SEGMENTATION OF INDUSTRY CATEGORY.

15 USC 644 note.

The Small Business Administration, pursuant to the authority of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), shall segment the industry category of shipbuilding and ship repair, as follows:

Maritime affairs.

- (1) nuclear shipbuilding and repair;
- (2) non-nuclear shipbuilding; and
- (3) non-nuclear ship repair, which shall be further segmented by, at least, East Coast and West Coast facilities.

SEC. 742. DEFINITION OF ARCHITECTURAL AND ENGINEERING SERVICES.

Section 901 of the Federal Property and Administrative Services Act (40 U.S.C. 541) is amended by striking out paragraph (3) and inserting the following:

"(3) The term 'architectural and engineering services' means—

“(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

“(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

“(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.”.

TITLE VIII—AUTHORIZATIONS, EFFECTIVE DATES, AND MISCELLANEOUS MATTERS

15 USC 636 note. **SEC. 801. REGULATIONS.**

The Small Business Administration shall—

(1) within 60 days after the date of enactment of this Act conduct meetings of present and potential participants in the program established by section 7(j)(10) of the Small Business Act, as amended by this Act, to ascertain and consider public comment on the nature and extent of regulations needed to implement this Act;

(2) within one hundred and twenty days after the date of enactment of this Act, publish in the Federal Register proposed rules and regulations implementing this Act; and

(3) within two hundred and ten days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act.

SEC. 802. AUTHORIZATIONS.

(a) **BUSINESS OPPORTUNITY SPECIALISTS.**—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of \$3,500,000 to provide for the employment, salaries and expenses of 70 additional Business Opportunity Specialists to carry out the duties described in sections 201 and 410 of this Act.

(b) **TRAINING OF BUSINESS OPPORTUNITY SPECIALISTS.**—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of \$500,000 to conduct the training and obtain the qualifications for Business Opportunity Specialists described in section 410.

(c) **TRADITIONAL PROCUREMENT CENTER REPRESENTATIVES.**—There is hereby authorized to be appropriated for each of fiscal years 1989 and 1990 the sum of \$735,000 to employ 15 additional Procurement Center Representatives.

(d) **BUSINESS LOANS.**—There is hereby authorized to be appropriated to the Business Loan and Investment Fund, established under section 4(c)(1) of the Small Business Act (15 U.S.C. 633(a)(1)),

Federal
Register,
publication.

the sum of \$10,000,000 each year for fiscal years 1989 and 1990 for both direct and guaranteed loans made pursuant to section 7(a)(20) of the Small Business Act, as added by section 302 of this Act.

(e) **JOB TRAINING.**—There is hereby authorized to be appropriated the sum of \$2,000,000 for fiscal year 1990 for the job training program established by section 7(j)(13)(E) of the Small Business Act (15 U.S.C. 636(j)(13)(E)), as added by section 301(b) of this Act.

(f) **LIMITATION.**—(1) Any new credit authority or authority to enter into contracts provided for in this Act is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

15 USC 636 note.

(2) No funds are authorized to be appropriated in subsequent appropriation Acts to the Administration for the purpose of making grants of financial assistance under the so called "Business Development Expense" program to any firm participating in the programs authorized by section 7(j)(10) or section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)).

SEC. 803 EFFECTIVE DATES.

15 USC 631 note.

(a) **IN GENERAL.**—Except as otherwise provided, the following provisions (and the amendments made by such provisions) shall take effect on the date of the enactment of this Act:

- (1) Sections 1 and 2.
- (2) Section 101.
- (3) Sections 202, 203, 204, 206, and 207.
- (4) Sections 301(a) and 303 (d), (e), and (f).
- (5) Sections 405, 406, 408, and 410.
- (6) Sections 504 and 505.
- (7) Sections 601 and 603.
- (8) Titles VII and VIII.

(9) Sections 7(j)(13)(G) and 7(j)(13)(I) of the Small Business Act (as added by section 301(b)).

(b) **SPECIAL RULES.**—(1) Except as otherwise provided, the following sections (and the amendments made by such sections) shall take effect on June 1, 1989:

- (A) Sections 201, 205, and 208.
- (B) Sections 301(b), 301(c), 303(a), 303(c), 303(g), 303(h), and 304.
- (C) Sections 401, 402, 403, 404, and 409.
- (D) Section 602.

(2) Section 407 shall take effect with respect to contracts entered into on or after June 1, 1989.

(3) The following sections (and the amendments made by such sections) shall take effect on October 1, 1989:

- (A) Section 209.
- (B) Sections 302 and 303(b).
- (C) Sections 501, 502, and 503.
- (D) Section 7(j)(13)(E) of the Small Business Act (as added by section 301(b) of this Act).

Approved November 15, 1988.

LEGISLATIVE HISTORY—H.R. 1807 (S. 1993):

HOUSE REPORTS: No. 100-460 (Comm. on Small Business) and No. 100-1070 (Comm. of Conference).

SENATE REPORTS: No. 100-394 accompanying S. 1993 (Comm. on Small Business).
CONGRESSIONAL RECORD:

Vol. 133 (1987): Dec. 1, considered and passed House.

Vol. 134 (1988): July 7, H.R. 1807 considered and passed Senate, amended, in lieu of S. 1993.

Oct. 12, House agreed to conference report.

Oct. 18, Senate agreed to conference report.

Public Law 100-657
100th Congress

An Act

Nov. 15, 1988

[H.R. 4399]

Commercial
Space Launch
Act
Amendments of
1988.
49 USC app. 2601
note.
49 USC app. 2601
note.

To facilitate commercial access to space, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Space Launch Act Amendments of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) a United States commercial space launch industry is an essential component of national efforts to assure access to space for Government and commercial users;

(2) the Federal Government should encourage, facilitate, and promote the use of the United States commercial space launch industry in order to continue United States aerospace preeminence;

(3) the United States commercial space launch industry must be competitive in the international marketplace;

(4) Federal Government policies should recognize the responsibility of the United States under international treaty for activities conducted by United States citizens in space; and

(5) the United States must maintain a competitive edge in international commercial space transportation by ensuring continued research in launch vehicle component technology and development.

SEC. 3. DEFINITIONS.

Section 4 of the Commercial Space Launch Act (49 U.S.C. App. 2603) is amended—

(1) in paragraph (10) by striking "and" at the end;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting immediately after paragraph (10) the following new paragraph:

"(11) 'third party' means any person or entity other than—

"(A) the United States, its agencies, or its contractors or subcontractors involved in launch services;

"(B) the licensee or transferee;

"(C) the licensee's or transferee's contractors, subcontractors, or customers involved in launch services; or

"(D) any such customer's contractors or subcontractors involved in launch services; and".

SEC. 4. PRIVATE ACQUISITION OF GOVERNMENT PROPERTY AND SERVICES.

(a) Section 15(a) of the Commercial Space Launch Act (49 U.S.C. App. 2614(a)) is amended by adding at the end the following: "In taking such actions, the Secretary shall consider the commercial

availability, on reasonable terms and conditions, of substantially equivalent launch property or launch services from a domestic source.”.

(b) Section 15(b)(1) of the Commercial Space Launch Act (49 U.S.C. App. 2614(b)(1) is amended by adding at the end the following: “For purposes of this paragraph, the term ‘direct costs’ means the actual costs that can be unambiguously associated with a commercial launch effort, and would not be borne by the United States Government in the absence of a commercial launch effort.”.

(c) Section 15 of the Commercial Space Launch Act (49 U.S.C. App. 2614) is amended by adding at the end the following new subsection:

“(d) The head of any Federal agency or department may collect payment for activities involved in the production of a launch vehicle or its payload for launch if such activities were agreed to by the owners or manufacturers of such launch vehicle or payload.”.

SEC. 5. INSURANCE REQUIREMENTS OF LICENSEE.

(a) Section 16 of the Commercial Space Launch Act (49 U.S.C. App. 2615) is amended to read as follows:

“LIABILITY INSURANCE

“Sec. 16. (a)(1)(A) Each license issued or transferred under this Act shall require the licensee or transferee— Claims.

“(i) to obtain liability insurance; or

“(ii) to demonstrate financial responsibility,

in an amount sufficient to compensate the maximum probable loss (as determined by the Secretary, after consultation with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and the heads of other appropriate agencies) from claims by a third party for death, bodily injury, or loss of or damage to property resulting from activities carried out under the license in connection with any particular launch. In no event shall a licensee or transferee be required to obtain insurance or demonstrate financial responsibility under this subparagraph, with respect to the aggregate of such claims arising out of any particular launch, in an amount which exceeds (I) \$500,000,000 or (II) the maximum liability insurance available on the world market at a reasonable cost, if such insurance is less than the amount in subclause (I).

“(B) Each license issued or transferred under this Act shall require the licensee or transferee—

“(i) to obtain liability insurance; or

“(ii) to demonstrate financial responsibility,

in an amount sufficient to compensate the maximum probable loss (as determined by the Secretary, after consultation with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and the heads of other appropriate agencies) from claims against any person by the United States for loss of or damage to property of the United States resulting from activities carried out under the license in connection with any particular launch. In no event shall a licensee or transferee be required to obtain insurance or demonstrate financial responsibility under this subparagraph, with respect to the aggregate of such claims arising out of any particular launch, in an amount which exceeds (I) \$100,000,000 or (II) the maximum liability

insurance available on the world market at a reasonable cost, if such insurance is less than the amount in subclause (I).

"(C) Each license issued or transferred under this Act shall require the licensee or transferee to enter into reciprocal waivers of claims with its contractors, subcontractors, and customers, and the contractors and subcontractors of such customers, involved in launch services, under which each party to each such waiver agrees to be responsible for any property damage or loss it sustains or for any personal injury to, death of, or property damage or loss sustained by its own employees resulting from activities carried out under the license.

"(D) The Secretary, on behalf of the United States, its agencies involved in launch services, and contractors and subcontractors involved in launch services, shall enter into reciprocal waivers of claims with the licensee or transferee, its contractors, subcontractors, and customers, and the contractors and subcontractors of such customers, involved in launch services, under which each party to each such waiver agrees to be responsible for any property damage or loss it sustains or for any personal injury to, death of, or property damage or loss sustained by its own employees resulting from activities carried out under the license. Any such waiver shall apply only to the extent that claims exceed the amount of insurance or demonstration of financial responsibility required under subparagraph (B). After consultation with the Administrator of the National Aeronautics and Space Administration and the Secretary of the Air Force, the Secretary may also waive, on behalf of the United States and any Federal agency, the right to recover any damages for loss of or damage to property of the United States to the extent insurance is not available by reason of policy exclusions which are determined by the Secretary to be usual for the type of insurance involved.

"(2) Any insurance policy obtained, or demonstration of financial responsibility made, pursuant to a requirement described in paragraph (1) shall protect the United States, its agencies, personnel, contractors, and subcontractors, and all contractors, subcontractors, and customers of the licensee or transferee, and all contractors and subcontractors of such customers, involved in providing the launch services, to the extent of their potential liabilities, at no cost to the United States.

"(3) The Secretary shall determine the maximum probable loss under paragraph (1) (A) and (B) associated with activities under a license, within 90 days after a licensee or transferee has required such a determination and has submitted all information the Secretary requires to make such a determination. The Secretary shall amend such determination as warranted by new information. Within 12 months after the date of enactment of the Commercial Space Launch Act Amendments of 1988, and within each 12-month period thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on the current determinations with respect to all issued licenses and the reasons for those determinations.

"(4) Within 6 months after the date of enactment of the Commercial Space Launch Act Amendments of 1988, and within each 12-month period thereafter, the Secretary shall review the amounts specified in paragraph (1) (A)(I) and (B)(I), and shall submit a report to the Congress which, if appropriate, contains a proposed adjustment to such amounts to conform with altered liability expectations

Reports.

Reports.

and availability of insurance on the world market. Such proposed adjustment shall take effect 30 days after the submission of such report.

“(b)(1) To the extent provided in advance in appropriations Acts or to the extent there is enacted additional legislative authority to provide for the payment of claims as submitted in the compensation plan outlined in paragraph (4), the Secretary shall provide for the payment by the United States of successful claims (including reasonable expenses of litigation or settlement) of a third party against the licensee or transferee, or its contractors, subcontractors, or customers, or the contractors or subcontractors of such customers, resulting from activities carried out pursuant to a license issued or transferred under this Act for death, bodily injury, or loss of or damage to property resulting from activities carried out under the license, but only to the extent that the aggregate of such successful claims arising out of any particular launch—

“(A) is in excess of the amount of insurance or demonstration of financial responsibilities required under subsection (a)(1)(A); and

“(B) is not in excess of the level that is \$1,500,000,000 (plus any additional sums necessary to reflect inflation occurring after January 1, 1989) above such amount.

The Secretary shall not provide for payment of any part of such claim for which the death, bodily injury, or loss of or damage to property has resulted from willful misconduct by the licensee or transferee. To the extent insurance required pursuant to subsection (a)(1)(A) is not available to cover any such successful third party liability claim by reason of insurance policy exclusions determined by the Secretary to be usual for the type of insurance involved, the Secretary may provide for the payment of such excluded claims without regard to the limitation expressed in subparagraph (A).

“(2) The payment of claims under paragraph (1) shall be subject to—

“(A) notice to the United States of any claim, or suit associated with such claim, against a party described in paragraph (1) for death, bodily injury, or loss of or damage to property;

“(B) participation or assistance in the defense by the United States, at its election, of that claim or suit; and

“(C) approval by the Secretary of that portion of any settlement which is to be paid out of appropriated funds of the United States.

“(3) The Secretary may withhold payment under paragraph (1) if the Secretary certifies that the amount is not just and reasonable, except that the amount of any claim determined by the final judgment of a court of competent jurisdiction shall be deemed by the Secretary to be just and reasonable.

“(4)(A) If as a result of activities carried out under a license issued or transferred under this Act the aggregate of the claims arising out of a particular launch are likely to exceed the amount of insurance or demonstration of financial responsibility required under the license, the Secretary shall (i) make a survey of the causes and extent of damage and (ii) expeditiously submit to the Congress a report setting forth the results of such survey.

“(B) Not later than 90 days after any determination by a court indicating that the liability for the aggregate of claims arising out of a particular launch under such a license may exceed the amount of insurance or demonstration of financial responsibility required

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under the license, the President, on the recommendation of the Secretary, shall submit to the Congress a compensation plan or plans that (i) outlines the aggregate dollar value of such claims; (ii) recommends sources of funding to pay for these claims; and (iii) includes any legislative language required to implement the compensation plan or plans if additional legislative authority is required. No compensation plan for a single event or incident may exceed the aggregate of \$1,500,000,000.

“(C) Any compensation plan transmitted to the Congress pursuant to subparagraph (B) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

“(D)(i) The provisions of this subparagraph shall apply with respect to consideration in the Senate of any such compensation plan and to Senate action on such compensation plan.

“(ii) Any such compensation plan that requires additional appropriations or additional legislative authority must be considered by the Senate pursuant to this subparagraph within 60 calendar days of continuous session of Congress after the date on which such plan is transmitted to the Congress.

“(iii) For the purposes of this subparagraph, the term ‘resolution’ means only a joint resolution of Congress the matter after the resolving clause of which is as follows: ‘That the approves the compensation plan numbered submitted to the Congress on , 19 ’, the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which includes more than one compensation plan.

“(iv) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate.

“(v)(I) If the committee of the Senate to which a resolution with respect to a compensation plan has been referred has not reported it at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

“(II) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

“(III) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

“(vi)(I) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not

e. An amendment to the motion shall not be in order, not be in order to move to reconsider the vote by which was agreed to or disagreed to.

ate on the resolution referred to in subclause (I) of this be limited to not more than 10 hours, which shall be ally between those favoring and those opposing such A motion further to limit debate shall not be debatable. ment to, or motion to recommit, the resolution shall not and it shall not be in order to move to reconsider the h such resolution was agreed to or disagreed to.

otions to postpone, made with respect to the discharge ittee, or the consideration of a resolution or motions to the consideration of other business, shall be decided ate.

als from the decision of the Chair relating to the ap- the rules of the Senate to the procedures relating to shall be decided without debate.

provisions of paragraphs (1) through (4) shall apply only nse issued or transferred under this Act for which a d valid application has been received by the Secretary date that is 5 years following the date of enactment of rcial Space Launch Act Amendments of 1988.

head of any Federal agency or department shall collect roceeds or any other payment owed for the loss of or Government property under its jurisdiction or control om activities carried out under a license issued or trans- r this Act. Such proceeds or other payment shall be he current applicable appropriations, funds, or accounts cy or department."

n 15(c) of the Commercial Space Launch Act (49 U.S.C.) is amended to read as follows:

stent with the requirements of this Act, the Secretary sh requirements for proof of financial responsibility and assurances as may be necessary to protect the United its agencies and personnel from liability, death, bodily ss of or damage to property as a result of a launch or a launch site involving Government facilities or person- retary may not under this subsection relieve the United ability for death, bodily injury, or loss of or damage to sulting from the willful misconduct of the United States s."

ED STATES LAUNCH INCENTIVES FOR CERTAIN SATELLITES.

requirements of subsection (a)(1)(B) of section 16 of the Space Launch Act (49 U.S.C. App. 2615), as amended by all not apply to eligible satellites.

e extent approved in appropriations Acts, the United not require payment for the provision of launch services on with the commercial launch of an eligible satellite. rposes of this section, the term "eligible satellite" means at—

as under construction on August 15, 1986;
as the subject of a launch services agreement or contract he National Aeronautics and Space Administration, as of August 15, 1986, was in effect and not yet carried

49 USC app. 2615
note.

(3) is licensed for launch under the Commercial Space Launch Act.

SEC. 7. PREEMPTION OF SCHEDULED LAUNCHES.

Section 15(b) of the Commercial Space Launch Act (49 U.S.C. App. 2614(b)) is amended by adding at the end the following new paragraph:

“(4)(A) The Secretary, with the cooperation of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, shall take steps to ensure that the launches of payloads with respect to which a launch date commitment from the United States has been obtained for a launch licensed under this Act are not preempted from access to United States launch sites or launch property, except in cases of imperative national need. Any determination of imperative national need shall be made by the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration, in consultation with the Secretary, and shall not be delegated. A licensee or transferee preempted from access to a launch site or launch property shall not be required to pay to the United States any amount for launch services solely attributable to the scheduled launch prevented by such preemption.

“(B) The Secretary of Defense or the Administrator of the National Aeronautics and Space Administration, in cooperation with the Secretary, as the case may be, shall report to the Congress within 7 days after any determination of imperative national need under subparagraph (A), including an explanation of the circumstances justifying such determination and a schedule for ensuring the prompt launching of a preempted payload.”

SEC. 8. STUDY OF PROCESS FOR SCHEDULING LAUNCHES.

The Secretary of Transportation, in cooperation with the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, and in consultation with representatives of the space launch and satellite industry, shall study ways and means of scheduling Government and commercial payloads on commercial launch vehicles at Government launch sites in a manner which—

(1) makes the best practicable use of the launch property of the United States; and

(2) assures that the launch property of the United States that is available for commercial use will be available on a commercially reasonable basis,

consistent with the objectives of the Commercial Space Launch Act. The Secretary shall report the results of such study to the Congress within 90 days after the date of enactment of this Act.

SEC. 9. COMMERCIAL SPACE LAUNCH SERVICE COMPETITION.

It is the sense of the Congress that the United States should explore ways and means of developing a dialogue with appropriate foreign government representatives to seek the development of guidelines for access to launch services by satellite builders and users in a manner that assures the conduct of reasonable and fair international competition in commercial space activities.

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SEC. 10. LAUNCH VEHICLE RESEARCH AND DEVELOPMENT.

The Administrator of the National Aeronautics and Space Administration shall, in consultation with representatives of the space launch and satellite industry, design a program for the support of research into launch systems component technologies, for the purpose of developing higher performance and lower cost United States launch vehicle technologies and systems available for the launch of commercial and Government spacecraft into orbit. The Administrator shall submit a report outlining such program to the Congress within 60 days after the date of enactment of this Act.

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SEC. 11. APPLICABILITY TO LICENSES.

This Act, and the amendments made by this Act, shall apply to all licenses issued under the Commercial Space Launch Act before, on, or after the date of enactment of this Act.

49 USC app. 2603
note.

Approved November 15, 1988.

LEGISLATIVE HISTORY—H.R. 4399:**HOUSE REPORTS:** No. 100-639 (Comm. on Science, Space, and Technology).**SENATE REPORTS:** No. 100-593 (Comm. on Commerce, Science, and Transportation).**CONGRESSIONAL RECORD**, Vol. 134 (1988):

May 24, considered and passed House.

Oct. 14, considered and passed Senate, amended.

Oct. 21, House concurred in Senate amendment.

Public Law 100-658
100th Congress

An Act

Nov. 15, 1988
[H.R. 5115]

To extend for 2 years section 314 of the Immigration Reform and Control Act of 1986, to make additional visas available to immigrants from underrepresented countries to enhance diversity in immigration, and to extend through December 31, 1989, H-1 nonimmigrant status for certain registered nurses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Immigration
Amendments of
1988.
8 USC 1101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Immigration Amendments of 1988”.

SEC. 2. 2-YEAR EXTENSION OF SECTION 314 OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.

8 USC 1153 note.

(a) IN GENERAL.—Section 314(a) of the Immigration Reform and Control Act of 1986 is amended by inserting “and 15,000 visa numbers in each of fiscal years 1989 and 1990” after “5,000 visa numbers in each of fiscal years 1987 and 1988”.

8 USC 1153 note.

(b) ADMINISTRATION.—In carrying out the amendment made by subsection (a), the Secretary of State shall continue to use the list of qualified immigrants established under section 314 of the Immigration Reform and Control Act of 1986 before the date of the enactment of this Act, and may continue to carry out such section under the regulations in effect (as of the date of July 1, 1988) under part 43 of title 22 of the Code of Federal Regulations.

8 USC 1153 note.

SEC. 3. MAKING VISAS AVAILABLE TO IMMIGRANTS FROM UNDERREPRESENTED COUNTRIES TO ENHANCE DIVERSITY IN IMMIGRATION.

(a) AUTHORIZATION OF ADDITIONAL VISAS.—Notwithstanding the numerical limitations in section 201(a) of the Immigration and Nationality Act (relating to worldwide level of immigration), but subject to the numerical limitations in section 202 of such Act (relating to per country numerical limitations), there shall be made available to qualified immigrants who are natives of underrepresented countries 10,000 visa numbers in each of fiscal years 1990 and 1991.

(b) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making visa numbers provided under subsection (a) available in the same manner as visa numbers were made available to qualified immigrants under section 203(a)(7) of the Immigration and Nationality Act, except that such visas shall be made available strictly in a random order among those who qualify during an application period established by the Secretary of State and except that if more than one petition is submitted with respect to any alien all such petitions submitted with respect to the alien shall be voided.

(c) WAIVER OF LABOR CERTIFICATION.—Section 212(a)(14) of the Immigration and Nationality Act shall not apply in the determination of an immigrant’s eligibility to receive any visa made available

under this section or in the admission of such an immigrant issued a visa under this section.

APPLICATION OF DEFINITIONS OF IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing in this section shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization.

UNDERREPRESENTED COUNTRY DEFINED.—In this section, the term “underrepresented country” means a foreign state natives of which, as used, during fiscal year 1988, less than 25 percent of the total number of immigrant visa numbers otherwise available in that fiscal year under section 202(a) of the Immigration and Nationality Act. In applying the previous sentence, there shall not be taken into account visa numbers issued under section 314 of the Immigration Reform and Control Act of 1986.

EXTENSION OF H-1 STATUS FOR CERTAIN REGISTERED NURSES THROUGH DECEMBER 31, 1989. 8 USC 1101 note.

The Attorney General shall provide for the extension through December 31, 1989, of nonimmigrant status under section 101(15)(H)(i) of the Immigration and Nationality Act for an alien who performs temporarily services as a registered nurse in the case of an alien who has had such status for a period of at least 5 years if—

(1) such status has not expired as of the date of the enactment of this Act but would otherwise expire during 1988 or 1989, due only to the time limitation with respect to such status; or

(2)(A) the alien's status as such a nonimmigrant expired during the period beginning on January 1, 1987, and ending on the date of the enactment of this Act, due only to the time limitation with respect to such status,

(B) the alien is present in the United States as of the date of the enactment of this Act,

(C) the alien has been employed as a registered nurse in the United States since the date of expiration of such status, and

(D) in the case of an alien whose status expired during 1987, the alien's employer has filed with the Immigration and Naturalization Service, before the date of the enactment of this Act, an appeal of a petition filed in connection with the alien's application for extension of such status.

Approved November 15, 1988.

LEGISLATIVE HISTORY—H.R. 5115:

HOUSE REPORTS: No. 100-1038 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 5, considered and passed House.

Oct. 21, considered and passed Senate.

Public Law 100-659
100th Congress

An Act

Nov. 15, 1988

[S. 1630]

To provide for retirement and survivors' annuities for bankruptcy judges and United States magistrates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Retirement and
Survivors'
Annuities for
Bankruptcy
Judges and
Magistrates Act
of 1988.
28 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988".

SEC. 2. BASIC RETIREMENT PROGRAM.

(a) **NEW RETIREMENT SYSTEM.**—Chapter 17 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 377. Retirement of bankruptcy judges and magistrates

"(a) **RETIREMENT BASED ON YEARS OF SERVICE.**—A bankruptcy judge or magistrate to whom this section applies and who retires from office after attaining the age of 65 years and serving at least 14 years, whether continuously or otherwise, as such bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to the salary being received at the time the judge or magistrate leaves office.

"(b) **RETIREMENT UPON FAILURE OF REAPPOINTMENT.**—A bankruptcy judge or magistrate to whom this section applies, who is not reappointed following the expiration of the term of office of such judge or magistrate, and who retires upon the completion of the term shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of such bankruptcy judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14, if—

"(1) such judge or magistrate has served at least 1 full term as a bankruptcy judge or magistrate, and

"(2) not earlier than 9 months before the date on which the term of office of such judge or magistrate expires, and not later than 6 months before such date, such judge or magistrate notified the appointing authority in writing that such judge or magistrate was willing to accept reappointment to the position in which such judge or magistrate was serving.

For purposes of this subsection, in the case of a bankruptcy judge, the written notice required by paragraph (2) shall be given to the chief judge of the circuit in which such bankruptcy judge is serving and, in the case of a magistrate, such notice shall be given to the chief judge of the district court in which the magistrate is serving.

"(c) **SERVICE OF AT LEAST 8 YEARS.**—A bankruptcy judge or magistrate to whom this section applies and who retires after serving at

least 8 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate shall, subject to subsection (f), be entitled to receive, upon attaining the age of 65 years and during the remainder of the judge's or magistrate's lifetime, an annuity equal to that portion of the salary being received at the time the judge or magistrate leaves office which the aggregate number of years of service, not to exceed 14, bears to 14. Such annuity shall be reduced by $\frac{1}{2}$ of 1 percent for each full month such bankruptcy judge or magistrate was under the age of 65 at the time the judge or magistrate left office, except that such reduction shall not exceed 20 percent.

“(d) RETIREMENT FOR DISABILITY.—A bankruptcy judge or magistrate to whom this section applies, who has served at least 5 years, whether continuously or otherwise, as such a bankruptcy judge or magistrate, and who retires or is removed from office upon the sole ground of mental or physical disability shall, subject to subsection (f), be entitled to receive, during the remainder of the judge's or magistrate's lifetime, an annuity equal to 40 percent of the salary being received at the time of retirement or removal or, in the case of a judge or magistrate who has served for at least 10 years, an amount equal to that proportion of the salary being received at the time of retirement or removal which the aggregate number of years of service, not to exceed 14, bears to 14.

“(e) COST-OF-LIVING ADJUSTMENTS.—A bankruptcy judge or magistrate who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 8340(b) of title 5, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the judge or magistrate retired or was removed.

“(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—A bankruptcy judge or magistrate shall be entitled to an annuity under this section if the judge or magistrate elects an annuity under this section by notifying the Director of the Administrative Office of the United States Courts. A bankruptcy judge or magistrate who elects to receive an annuity under this section shall not be entitled to receive any annuity to which such judge or magistrate would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5.

“(g) CALCULATION OF SERVICE.—(1) For purposes of calculating an annuity under this section—

“(A) full-time service as a bankruptcy judge or magistrate to whom this section applies may be credited; and

“(B) each month of service shall be credited as one-twelfth of a year, and the fractional part of any month shall not be credited.

“(2)(A) In the case of an individual who is a bankruptcy judge to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or physical disability, any service of that individual as a United States magistrate to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of a magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

“(B) In the case of an individual who is a magistrate to whom this section applies and who retires under this section or who is removed from office under subsection (d) upon the sole ground of mental or

physical disability, any service of that individual as a bankruptcy judge to whom this section applies, and any service of that individual as a full-time judicial officer who performed the duties of magistrate and a bankruptcy judge at the same time, shall be included for purposes of calculating years of service under subsection (a), (b), (c), or (d), as the case may be.

“(h) COVERED POSITIONS AND SERVICE.—This section applies to—

“(1) any bankruptcy judge appointed under—

“(A) section 152 of this title;

“(B) section 34 of the Bankruptcy Act before the repeal of that Act by section 401 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2682); or

“(C) section 404 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549); and

“(2) any United States magistrate appointed under section 631 of this title,

only with respect to service in or after October 1, 1979, as such a bankruptcy judge or magistrate.

“(i) PAYMENTS PURSUANT TO COURT ORDER.—(1) Payments under this section which would otherwise be made to a bankruptcy judge or magistrate based upon his or her service shall be paid (in whole or in part) by the Director of the Administrative Office of the United States Courts to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

“(2) Paragraph (1) shall apply only to payments made by the Director of the Administrative Office of the United States Courts after the date of receipt by the Director of written notice of such decree, order, or agreement, and such additional information as the Director may prescribe.

“(3) As used in this subsection, the term ‘court’ means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian tribal court or courts of Indian offense.

“(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—

“(1) DEDUCTIONS.—Beginning with the next pay period after the Director of the Administrative Office of the United States Courts receives a notice under subsection (f) that a bankruptcy judge or magistrate has elected an annuity under this section, the Director shall deduct and withhold 1 percent of the salary of such bankruptcy judge or magistrate. Amounts shall be so deducted and withheld in a manner determined by the Director. Amounts deducted and withheld under this subsection shall be deposited in the Treasury of the United States to the credit of the Judicial Officers’ Retirement Fund. Deductions under this subsection from the salary of a bankruptcy judge or magistrate shall terminate upon the retirement of the bankruptcy judge or magistrate or upon completing 14 years of service for which contributions under this section have been made, whether continuously or otherwise, as calculated under subsection (g), whichever occurs first.

“(2) CONSENT TO DEDUCTIONS; DISCHARGE OF CLAIMS.—Each bankruptcy judge or magistrate who makes an election under subsection (f) shall be deemed to consent and agree to the

deductions from salary which are made under paragraph (1). Payment of such salary less such deductions (and any deductions made under section 376 of this title) is a full and complete discharge and acquittance of all claims and demands for all services rendered by such bankruptcy judge or magistrate during the period covered by such payment, except the right to those benefits to which the bankruptcy judge or magistrate is entitled under this section (and section 376).

k) DEPOSITS FOR PRIOR SERVICE.—Each bankruptcy judge or magistrate who makes an election under subsection (f) may deposit, for service performed before such election for which contributions have been made under this section, an amount equal to 1 percent of the salary received for that service. Credit for any period covered by such service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for such period.

l) INDIVIDUAL RETIREMENT RECORDS.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each bankruptcy judge or magistrate from whom such amounts have been received, for credit to the Judicial Officers' Retirement Fund.

m) ANNUITIES AFFECTED IN CERTAIN CASES.—

“(1) PRACTICING LAW AFTER RETIREMENT.—

“(A) FORFEITURE OF ANNUITY.—Subject to subparagraph (B), any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall forfeit all rights to an annuity under this section for all periods beginning on or after the first day on which he or she so practices law.

“(B) FORFEITURE NOT TO APPLY WHERE INDIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.—(i) If a bankruptcy judge or magistrate makes an election to practice law after retirement under this section—

“(I) subparagraph (A) shall not apply to such bankruptcy judge or magistrate beginning on the date such election takes effect, and

“(II) the annuity payable under this section to such bankruptcy judge or magistrate, for periods beginning on or after the date such election takes effect, shall be equal to the annuity to which such bankruptcy judge or magistrate is entitled on the day before such effective date.

“(ii) An election under clause (i)—

“(I) may be made by a bankruptcy judge or magistrate eligible for retirement under this section, and

“(II) shall be filed with the Director of the Administrative Office of the United States Courts.

Such an election, once it takes effect, shall be irrevocable.

“(iii) Any election under this subparagraph shall take effect on the first day of the first month following the month in which the election is made.

“(2) RECALL NOT PERMITTED.—Any bankruptcy judge or magistrate who retires under this section and who thereafter practices law shall not be eligible for recall under section 155(b), 375, or 636(h) of this title.

“(3) ACCEPTING OTHER EMPLOYMENT.—Any bankruptcy judge or magistrate who retires under this section and thereafter

accepts compensation for civil office or employment under the United States Government (other than for the performance of functions as a bankruptcy judge or magistrate under section 155(b), 375, or 636(h) of this title) shall forfeit all rights to an annuity under this section for the period for which such compensation is received. For purposes of this paragraph, the term 'compensation' includes retired pay or salary received in retired status.

"(n) LUMP-SUM PAYMENTS.—

"(1) ELIGIBILITY.—(A) Subject to paragraph (2), an individual who serves as a bankruptcy judge or magistrate and—

"(i) who leaves office and is not reappointed as a bankruptcy judge or magistrate for at least 31 consecutive days;

"(ii) who files an application with the Administrative Office of the United States Courts for payment of the lump-sum credit;

"(iii) is not serving as a bankruptcy judge or magistrate at the time of filing of the application; and

"(iv) will not become eligible to receive an annuity under this section within 31 days after filing the application; is entitled to be paid the lump-sum credit. Payment of the lump-sum credit voids all rights to an annuity under this section based on the service on which the lump-sum credit is based, until that individual resumes office as a bankruptcy judge or magistrate.

"(B) Lump-sum benefits authorized by subparagraphs (C), (D), and (E) of this paragraph shall be paid to the person or persons surviving the bankruptcy judge or magistrate and alive on the date title to the payment arises, in the order of precedence set forth in subsection (o) of section 376 of this title, and in accordance with the last two sentences of that subsection. For purposes of the preceding sentence, the term 'judicial official' as used in subsection (o) of section 376 shall be deemed to mean 'bankruptcy judge or magistrate'.

"(C) If a bankruptcy judge or magistrate dies before receiving an annuity under this section, the lump-sum credit shall be paid.

"(D) If all annuity rights under this section based on the service of a deceased bankruptcy judge or magistrate terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

"(E) If a bankruptcy judge or magistrate who is receiving an annuity under this section dies, annuity accrued and unpaid shall be paid.

"(F) Annuity accrued and unpaid on the termination, except by death, of the annuity of a bankruptcy judge or magistrate shall be paid to that individual.

"(G) Subject to paragraph (2), a bankruptcy judge or magistrate who forfeits rights to an annuity under subsection (m)(3) before the total annuity paid equals the lump-sum credit, shall be entitled to be paid the difference if the bankruptcy judge or magistrate files an application with the Administrative Office of the United States Courts for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

“(2) SPOUSES AND FORMER SPOUSES.—(A) Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

“(i) may be made only if any current spouse and any former spouse of the bankruptcy judge or magistrate are notified of the bankruptcy judge’s or magistrate’s application; and

“(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court or court approved property settlement agreement incident to such decree, if—

“(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved; and

“(II) payment of the lump-sum credit or other payment would extinguish entitlement of the bankruptcy judge’s or magistrate’s spouse or former spouse to any portion of an annuity under subsection (i).

“(B) Notification of a spouse or former spouse under this paragraph shall be made in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the bankruptcy judge or magistrate establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.

“(C) The Director shall prescribe regulations under which this paragraph shall be applied in any case in which the Director receives two or more orders or decrees described in subparagraph (A).

Regulations.

“(3) DEFINITION.—For purposes of this subsection, the term ‘lump-sum credit’ means the unrefunded amount consisting of—

“(A) retirement deductions made under this section from the salary of a bankruptcy judge or magistrate;

“(B) amounts deposited under subsection (k) by a bankruptcy judge or magistrate covering earlier service; and

“(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Judicial Officers’ Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under subsection (o);

but does not include interest—

“(i) if the service covered thereby aggregates 1 year or less; or

“(ii) for the fractional part of a month in the total service.

“(o) JUDICIAL OFFICERS’ RETIREMENT FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury a fund which shall be known as the ‘Judicial Officers’ Retirement Fund’. The Fund is appropriated for the payment of annuities, refunds, and other payments under this section.

“(2) INVESTMENT OF FUND.—The Secretary of the Treasury shall invest, in interest bearing securities of the United States, such currently available portions of the Judicial Officers’ Retirement Fund as are not immediately required for payments

Appropriation
authorization.

from the Fund. The income derived from these investments constitutes a part of the Fund.

“(3) **UNFUNDED LIABILITY.**—(A) There are authorized to be appropriated to the Judicial Officers’ Retirement Fund amounts required to reduce to zero the unfunded liability of the Fund.

“(B) For purposes of subparagraph (A), the term ‘unfunded liability’ means the estimated excess, determined on an annual basis in accordance with the provisions of section 9503 of title 31, of the present value of all benefits payable from the Judicial Officers’ Retirement Fund over the sum of—

“(i) the present value of deductions to be withheld under this section from the future basic pay of bankruptcy judges and magistrates; plus

“(ii) the balance in the Fund as of the date the unfunded liability is determined.

In making any determination under this subparagraph, the Comptroller General shall use the applicable information contained in the reports filed pursuant to section 9503 of title 31, with respect to the retirement annuities provided for in this section.

Appropriation
authorization.

“(C) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.”.

(b) **CONFORMING AMENDMENT.**—The table of sections at the beginning of chapter 17 of title 28, United States Code, is amended by adding at the end the following new item:

“377. Retirement of bankruptcy judges and magistrates.”.

28 USC 377 note.

(c) **INCUMBENT JUDGES AND MAGISTRATES.**—

(1) **RETIREMENT ANNUITY UNDER TITLE 5 AND SECTION 377 OF TITLE 28.**—A bankruptcy judge or United States magistrate in active service on the effective date of this Act shall, subject to paragraph (2), be entitled, in lieu of the annuity otherwise provided under the amendments made by this section, to—

(A) an annuity under subchapter III of chapter 83, or under chapter 84, of title 5, United States Code, as the case may be, for creditable service before the date on which service would begin to be credited for purposes of subparagraph (B), and

(B) an annuity calculated under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by this section, for any service as a full-time bankruptcy judge or magistrate on or after October 1, 1979 (as specified in the election pursuant to paragraph (2)) for which deductions and deposits are made under subsections (j) and (k) of such section 377, as applicable, without regard to the minimum number of years of service as such a bankruptcy judge or magistrate, except that—

(i) in the case of a judge or magistrate who retires with less than 8 years of service, the annuity under subsection (c) of section 377 of title 28, United States Code, shall be equal to that proportion of the salary being received at the time the judge or magistrate leaves office which the years of service bears to 14, subject to a reduction in accordance with subsection (c) of such section 377 if the bankruptcy judge or magistrate is under age 65 at the time he or she leaves office, and

(ii) the aggregate amount of the annuity initially payable on retirement under this subsection may not exceed the rate of pay for the bankruptcy judge or magistrate which is in effect on the day before the retirement becomes effective.

(2) **FILING OF NOTICE OF ELECTION.**—A bankruptcy judge or magistrate shall be entitled to an annuity under this subsection only if the judge or magistrate files a notice of that election with the Director of the Administrative Office of the United States Courts specifying the date on which service would begin to be credited under section 377 of title 28, United States Code, in lieu of chapter 83 or chapter 84 of title 5, United States Code.

(3) **LUMP-SUM CREDIT UNDER TITLE 5.**—A bankruptcy judge or magistrate who makes an election under paragraph (2) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service which is covered under section 377 of title 28, United States Code, as added by this section, pursuant to that election, and with respect to which any contributions were made by the judge or magistrate under the applicable provisions of title 5, United States Code.

(4) **RECALL.**—With respect to any bankruptcy judge or magistrate receiving an annuity under this subsection who is recalled to serve under section 375 of title 28, United States Code—

(A) the amount of compensation which such recalled judge or magistrate receives under subsection (c) of such section shall be calculated on the basis of the annuity received under this subsection; and

(B) such recalled judge or magistrate may serve as a reemployed annuitant to the extent permitted by subsection (e) of section 375 of such title.

Section 377(m)(3) of title 28, United States Code, as added by subsection (a) of this section, shall not apply with respect to service as a reemployed annuitant described in subparagraph (B).

SEC. 3. JUDICIAL SURVIVORS' ANNUITIES.

(a) **ANNUITIES FOR SURVIVORS OF BANKRUPTCY JUDGES AND MAGISTRATES RETIRING UNDER NEW SYSTEM.**—Section 376 of title 28, United States Code, is amended as follows:

(1) Subsection (a)(1) is amended—

(A) by striking out “or” at the end of subparagraph (D);

(B) by adding “or” at the end of subparagraph (E);

(C) by inserting after subparagraph (E) the following:

“(F) a full-time bankruptcy judge or a full-time United States magistrate;” and

(D) by striking out “; or (iv) October 1, 1986;” and inserting in lieu thereof “, (iv) October 1, 1986, or (v) the date of the enactment of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988, in the case of a full-time bankruptcy judge or United States magistrate in active service on that date;”.

(2) Subsection (a)(2) is amended—

(A) by striking out “and” at the end of subparagraph (D);

(B) by adding “and” at the end of subparagraph (E); and

(C) by adding at the end the following:

“(F) in the case of a bankruptcy judge or United States magistrate, an annuity paid under section 377 of this title;”.

(3) Subsection (b) is amended in the last sentence—

(A) by inserting after “deductions” the following: “(and any deductions made under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)”; and

(B) by inserting before the period the following: “(and under section 377 of this title or under subchapter III of chapter 83, or chapter 84, of title 5)”.

28 USC 376 note.

(b) **SURVIVORS' ANNUITIES FOR INCUMBENTS.**—In the case of a bankruptcy judge or magistrate who elects an annuity under section 2(c), only service for which an annuity under subsection (b) or (c) and subsection (g) of section 377 of title 28, United States Code, as added by section 2 of this Act, is calculated under section 2(c) may be used in the computation of an annuity under section 376 of title 28, United States Code, as amended by subsection (a) of this section.

SEC. 4. AMENDMENTS RELATED TO RECALL.

(a) **RECALL OF BANKRUPTCY JUDGES.**—Section 155(b) of title 28, United States Code, is amended—

(1) by inserting “section 377 of this title or in” after “annuity in”; and

(2) by inserting “which are applicable to such judge” after “title 5”.

(b) **ALTERNATIVE RECALL OF CERTAIN JUDGES AND MAGISTRATES.**—Section 375 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting “under the provisions of section 377 of title or” after “has retired”; and

(2) in subsection (c)—

(A) by inserting “under the provisions of section 377 of this title or” after “annuity provided”; and

(B) by adding at the end thereof the following: “The annuity of a bankruptcy judge or magistrate who completes that 5-year period of service, whose certification is not renewed, and who retired under section 377 of this title shall be equal to the salary in effect, at the end of that 5-year period, for the office from which he or she retired.”; and

(3) in subsection (g) by inserting “who retired under the applicable provisions of title 5” after “section”.

(c) **RECALL OF MAGISTRATES.**—Section 636(h) of title 28, United States Code, is amended in the second sentence—

(1) by inserting “section 377 of this title or in” after “annuity set forth in”; and

(2) by inserting “which are applicable to such magistrate” after “title 5”.

SEC. 5. TECHNICAL AMENDMENTS.

Section 631(e) of title 28, United States Code, is amended—

(1) by striking out “(j)” and inserting in lieu thereof “(k)”; and

(2) by striking out “(i)” and inserting in lieu thereof “(j)”; and

(3) by striking out “(h)” and inserting in lieu thereof “(i)”.

SEC. 6. CONFORMING AMENDMENTS.

(a) **ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.**—Section 604(a) of title 28, United States Code (relating to the duties of

the Director of the Administrative Office of the United States Courts) is amended—

(1) in paragraph (7) by inserting “bankruptcy judges, United States magistrates,” after “United States,”;

(2) by redesignating paragraph (18) as paragraph (19); and

(3) by inserting after paragraph (17) the following:

“(18) Regulate and pay annuities to bankruptcy judges and United States magistrates in accordance with section 377 of this title and paragraphs (1)(B) and (2) of section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988.”

(b) **CIVIL SERVICE RETIREMENT SYSTEM.**—Section 8334(i) of title 5, United States Code, is amended by adding at the end the following new paragraph:

“(4) Notwithstanding any other provision of law, a bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate shall be entitled to a lump-sum credit under section 8342(a) of this title.”

(c) **FEDERAL EMPLOYEES RETIREMENT SYSTEM.**—Section 8402 of title 5, United States Code, is amended by adding at the end the following new subsection:

“(e) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate shall be entitled to a lump-sum credit under section 8424 of this title.”

SEC. 7. THRIFT SAVINGS PLAN.

(a) **PARTICIPATION IN THE PLAN.**—Subchapter III of chapter 84 of title 5, United States Code, is amended by adding at the end the following:

“§ 8440a. Bankruptcy judges and magistrates

“(a)(1) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988 may elect to contribute an amount of such individual’s basic pay to the Thrift Savings Fund.

“(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

“(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrates who make contributions to the Thrift Savings Fund under subsection (a) of this section.

“(2) The amount contributed by a bankruptcy judge or magistrate for any pay period shall not exceed 5 percent of basic pay for such pay period.

“(3) No contributions shall be made under section 8432(c) of this title for the benefit of a bankruptcy judge or magistrate making contributions under subsection (a) of this section.

“(4)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an immediate annuity under section 377 of title 28 (including a disability annuity under subsection (d) of such section) or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988.

“(B) Section 8433(c) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988; except that the period described in paragraph (3) of section 8433(c) commences on or after the date on which payment of the bankruptcy judge’s or magistrate’s annuity under section 377 of title 28 commences.

“(C) Section 8433(d) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors’ Annuities for Bankruptcy Judges and Magistrates Act of 1988.

“(5) With respect to bankruptcy judges and magistrates to whom this section applies, retirement under section 377 of title 28 is a separation from service for purposes of this subchapter and subchapter VII.

“(6) For purposes of this section, the terms ‘retirement’ and ‘retire’ include removal from office under section 377(d) of title 28 on the sole ground of mental or physical disability.

“(7) Sums contributed pursuant to this section by bankruptcy judges or magistrates, as well as all previous contributions to the Thrift Savings Fund by those bankruptcy judges and magistrates, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.

“(8) In the case of a bankruptcy judge or magistrate who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 377 of title 28, that annuity shall be offset by an amount equal to the amount which represents the Government’s contribution to that person’s Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.”

(b) **CONFORMING AMENDMENT.**—The table of sections at the beginning of chapter 84 of title 5, United States Code, is amended by adding at the end the following:

“8440a. Bankruptcy judges and magistrates.”.

28 USC 377 note. **SEC. 8. REPORT TO CONGRESS.**

The Director of the Administrative Office of the United States Courts shall, not later than 5 years after the date of the enactment of this Act, submit a report to the Congress on the financial oper-

ation of the retirement annuity program established under this Act and the amendments made by this Act. The report shall, in particular, include a discussion of the deductions from salary and deposits made for contributions to the annuity program and the need for continuing the deductions at the level established under the amendments made by this Act.

SEC. 9. EFFECTIVE DATE.

28 USC 377 note.

(a) **IN GENERAL.**—Subject to subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to bankruptcy judges and magistrates who retire on or after the date of the enactment of this Act.

(b) **EXCEPTION FOR JUDGES AND MAGISTRATES RETIRING ON OR AFTER JULY 31, 1987.**—A bankruptcy judge or magistrate who left office on or after July 31, 1987, and before the date of the enactment of this Act may elect to receive an annuity, or to participate in the Judicial Survivors' Annuity System, under the amendments made by this Act if such bankruptcy judge or magistrate, within 60 days after so leaving office, accepted office or employment with the United States Government or a State government or was eligible at the time he or she left office for an immediate annuity under title 5, United States Code. Any election under this subsection shall not be valid unless it is made within 6 months after the date of the enactment of this Act and under the same conditions as other persons who may make elections under the amendments made by this Act, except that any such person who makes an election under this subsection shall not receive a lump-sum credit under section 8342 or 8424 of title 5, United States Code, for prior service and shall not be required to make contributions for prior years of creditable service.

Approved November 15, 1988.

LEGISLATIVE HISTORY—S. 1630 (H.R. 4340):

HOUSE REPORTS: No. 100-638, Pt. 1, accompanying H.R. 4340 (Comm. on the Judiciary) and No. 100-1072 (Comm. of Conference).

SENATE REPORTS: No. 100-293 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Mar. 3, considered and passed Senate.

July 11, H.R. 4340 considered and passed House; proceedings vacated and S. 1630, amended, passed in lieu.

Oct. 7, Senate agreed to conference report.

Oct. 19, House agreed to conference report.

Public Law 100-660
100th Congress

An Act

Nov. 15, 1988
[S. 2042]

To authorize the Vietnam Women's Memorial Project, Inc., to establish a memorial on Federal land in the District of Columbia or its environs to honor women of the Armed Forces of the United States who served in the Republic of Vietnam during the Vietnam era.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

40 USC 1003
note.

SECTION 1. ESTABLISHMENT OF MEMORIAL.

(a) IN GENERAL.—The Vietnam Women's Memorial Project, Inc., is authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor women who served in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam era.

(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial shall be in accordance with the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes", approved November 14, 1986 (40 U.S.C. 1001 et seq.).

SEC. 2. PAYMENT OF EXPENSES.

The United States shall not pay any expense of the establishment of the memorial.

SEC. 3. SENSE OF THE CONGRESS.

It is the sense of the Congress, with respect to location of the memorial in accordance with the Act referred to in section 1(b), that it would be most fitting and appropriate to place the memorial within the 2.2 acre site of the Vietnam Veterans Memorial in the District of Columbia.

Approved November 15, 1988.

LEGISLATIVE HISTORY—S. 2042:

HOUSE REPORTS: No. 100-948 (Comm. on House Administration).

SENATE REPORTS: No. 100-371 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 134 (1988):

June 14, considered and passed Senate.

Sept. 23, considered and passed House, amended.

Oct. 12, Senate concurred in House amendments with amendments.

Oct. 21, House disagreed to Senate amendments. Senate receded from its amendments.

Public Law 100-661
96th Congress

Joint Resolution

Designating October 1988 as "Pregnancy and Infant Loss Awareness Month".

Nov. 15, 1988
[S.J. Res. 314]

Whereas every year thousands of parents lose children to miscarriage, stillbirth, or infant death;
Whereas an increase in the public's awareness of pregnancy loss and infant death will expand the opportunities for parents who suffer the tragedy of infant loss to share their grief and constructively deal with their feelings of stress and loneliness;
Whereas while many groups have been formed at the local level to address the problems these parents face, a greater national effort must be made to provide comfort and assistance to parents who suffer the tragedy of pregnancy loss or infant death; and
Whereas the designation of a special month will bring much-needed attention to the devastating emotional effects of pregnancy loss and infant death: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 1988 be designated as "Pregnancy and Infant Loss Awareness Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe this month with appropriate ceremonies and activities.

Approved November 15, 1988.

LEGISLATIVE HISTORY—S.J. Res. 314:

CONGRESSIONAL RECORD, Vol. 134 (1988):
Sept. 28, considered and passed Senate.
Oct. 21, considered and passed House.

Public Law 100-662
100th Congress

Joint Resolution

Nov. 15, 1988

[S.J. Res. 315]

Designating 1989 as "Year of the Young Reader".

Whereas books and reading are the basic nourishment of a growing mind and the foundation of a child's future education and enrichment;

Whereas developing children into readers today is the best way to ensuring a literate and informed citizenry tomorrow;

Whereas the Book Industry Study Group and others have reported a decline in book reading among young people in recent years; and Whereas since 1983 the National Commission on Excellence, the Commission on Reading, and the Librarian of Congress have urged this Nation to give renewed attention to encouraging a love of books and reading among our young people: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1989 is designated the "Year of the Young Reader", and the President is authorized and requested to issue a proclamation encouraging parents, educators, librarians, government officials, members of the book community, corporations, associations, and the people of the United States to observe such year with appropriate programs, ceremonies, and activities aimed at giving our children and young adults the gift, the joy, and the promise of reading.

Approved November 15, 1988.

LEGISLATIVE HISTORY—S.J. Res. 315:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed Senate.

Oct. 21, considered and passed House.

Joint Resolution

Enacting November 27 through December 3, 1988, as "National Sir Winston Churchill Recognition Week".

Nov. 15, 1988
[S.J. Res. 340]

Whereas April 9, 1988, marks the 25th anniversary of the granting of honorary citizenship to Sir Winston Churchill by the United States;

Whereas Sir Winston Churchill was born on November 30, 1874; and whereas Sir Winston Churchill's mother, Jennie Jerome Churchill, was an American, thereby making Sir Winston Churchill a son of America though a subject of Great Britain;

Whereas Sir Winston Churchill inspired the world with his commitment to the ideals of freedom, not only during peace time but during the darkest moments of World War II;

Whereas Sir Winston Churchill recognized the importance of understanding history and the relevance of history to the present day; and

Whereas Sir Winston Churchill made significant contributions to the modern world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 27 through December 3, 1988, is designated as "National Sir Winston Churchill Recognition Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

Approved November 15, 1988.

LEGISLATIVE HISTORY—S.J. Res. 340:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 20, considered and passed Senate.

Oct. 21, considered and passed House.

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Public Law 100-664
100th Congress

Joint Resolution

Nov. 15, 1988
[S.J. Res. 386]

To designate the week of June 18 through June 24, 1989, as "National Grasslands Week".

Whereas there are nearly 4,000,000 acres of publicly owned grasslands located in 14 States across the United States;

Whereas these national grasslands are managed according to the principles of land conservation, multiple-use of land, promotion of development of grassland agriculture and sustained-yield management of forage, fish, wildlife, timber, water, and recreational resources;

Whereas millions of Americans and visitors to our Nation enjoy our national grasslands for camping, hiking, fishing, boating, hunting, snow-mobiling, biking, cross-country skiing, and many other outdoor activities each year;

Whereas our national grasslands continue to provide employment and local stability to rural America and contribute approximately \$750,000,000 to the gross national product of our Nation from livestock grazing, energy, environmental, tourism, and recreation industries;

Whereas our national grasslands contain an abundant storehouse of historical, archaeological, and anthropological artifacts unique to North America;

Whereas our national grasslands comprise a unique ecosystem providing our Nation with water, minerals, soils, plants, and animals in a habitat not found elsewhere; and

Whereas our national grasslands provide a model demonstrating for the public the principles of conservation, cooperation, multiple-use of the land, and an appreciation of natural resources: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of June 18 through June 24, 1989, is designated "National Grasslands Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe this week with appropriate ceremonies and activities.

Approved November 15, 1988.

LEGISLATIVE HISTORY—S.J. Res. 386:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 7, considered and passed Senate.

Oct. 21, considered and passed House.

An Act

To convey Forest Service land to Flagstaff, Arizona.

Nov. 16, 1988

[S. 253]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (1) of section 1 of Public Law 96-581, relating to land conveyances to the State of Arizona, is amended by striking out "Any conveyances" and inserting in lieu thereof "Except as provided in subsection (c), any conveyances".

94 Stat. 3371.

(b) Subsection (c) of section 1 is amended to read as follows:

94 Stat. 3372.

"(c)(1) Of the tract of land described in subsection (a) of this section, the Secretary shall offer to sell at the fair market value as determined on December 23, 1980, to the Flagstaff Medical Regional Center, Flagstaff, Arizona, not to exceed 18.25 acres immediately adjacent to said Flagstaff Medical Regional Center and shall convey, without consideration, except for administrative costs associated with the preparation of title and legal description, to the city of Flagstaff, Arizona, 134.57 acres, under special use permit in effect on the date of enactment of this Act to the city of Flagstaff.

"(2) Title to any real property acquired by the city of Flagstaff pursuant to this section shall revert to the United States if the city attempts to convey or otherwise transfer ownership of any portion of such property to any other party or attempts to encumber such title, or if the town permits the use of any portion of such property for any purpose incompatible with the purposes specified in paragraph (1) of this section.

"(3) Real property conveyed to the city of Flagstaff pursuant to this section shall be used for public open space, park and recreational purposes.

Recreation.

"(4) Except for any land to be conveyed to the Flagstaff Medical Regional Center and the city of Flagstaff, the Secretary shall solicit public offers for the remaining lands and improvements authorized under subsection (a) of this section. All offers shall be publicly opened at the time and place stated in the solicitation in accordance with the administrative requirements of the Secretary. The Secretary shall consider price and land values before entering into agreements or land exchanges with any party whose offer conforming to the solicitation notice is determined by the Secretary to be the most advantageous to the Government. Notwithstanding any other

Public
information.

provision of this Act, the Secretary may reject any offer if the Secretary determines that such rejection is in the public interest.”.

Approved November 16, 1988.

LEGISLATIVE HISTORY—S. 253:

SENATE REPORTS: No. 100-174 (Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD:

Vol. 133 (1987): Oct. 1, considered and passed Senate.

Vol. 134 (1988): Oct. 21, considered and passed House.

Public Law 100-666
100th Congress

An Act

To reauthorize housing relocation under the Navajo-Hopi Relocation Program, and
for other purposes.

Nov. 16, 1988

[S. 1236]

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

Navajo and Hopi
Indian
Relocation
Amendments of
1988.
25 USC 640d
note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Navajo and Hopi Indian
Relocation Amendments of 1988".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Subsection (a) of section 25 of Public Law 93-531 (25 U.S.C.
640d-24(a)) is amended—

(1) by striking out "\$7,700,000" in paragraph (4) and inserting
in lieu thereof "\$13,000,000", and

(2) by striking out "\$15,000,000 annually for fiscal years 1983
through 1987" in paragraph (8) and inserting in lieu thereof
"\$30,000,000 annually for fiscal years 1989, 1990, and 1991".

USE OF DISCRETIONARY FUNDS

SEC. 3. Subsection (b) of section 27 of Public Law 93-531 (25 U.S.C.
640d-25) is amended to read as follows:

"(b) Funds appropriated under the authority of subsection (a) may
be used by the Commissioner for grants, contracts, or expenditures
which significantly assist the Commissioner or assist the Navajo
Tribe or Hopi Tribe in meeting the burdens imposed by this Act."

COMMISSIONER ON NAVAJO AND HOPI INDIAN RELOCATION

SEC. 4. (a) Section 12 of Public Law 93-531 (25 U.S.C. 640d-11) is
amended to read as follows:

"(a) There is hereby established as an independent entity in the
executive branch the Office of Navajo and Hopi Indian Relocation
which shall be under the direction of the Commissioner on Navajo
and Hopi Relocation (hereinafter in this Act referred to as the
'Commissioner').

"(b)(1) The Commissioner shall be appointed by the President by
and with the advice and consent of the Senate.

President of U.S.

"(2) The term of office of the Commissioner shall be 2 years. An
individual may be appointed Commissioner for more than one term.

"(3) The Commissioner shall be a full time employee of the United
States and shall be paid at the rate of GS-18 of the General
Schedule under section 5332 of title 5, United States Code.

"(c)(1)(A) Except as otherwise provided by the Navajo and Hopi
Indian Relocation Amendments of 1988, the Commissioner shall
have all the powers and be responsible for all the duties that the

Navajo and Hopi Indian Relocation Commission had before the enactment of such amendments.

"(B) All funds appropriated to the Navajo and Hopi Indian Relocation Commission before the date on which the first Commissioner on Navajo and Hopi Indian Relocation is confirmed by the Senate that have not been expended on such date shall become available to the Office of Navajo and Hopi Indian Relocation on such date and shall remain available without fiscal year limitation.

"(2) There are hereby transferred to the Commissioner, on January 31, 1989—

"(A) all powers and duties of the Bureau of Indian Affairs derived from Public Law 99-190 (99 Stat. at 1236) that relate to the relocation of members of the Navajo Tribe from lands partitioned to the Hopi Tribe, and

"(B) all funds appropriated for activities relating to such relocation pursuant to Public Law 99-190 (99 Stat. at 1236): *Provided*, That such funds shall be used by the Commissioner for the purpose for which such funds were appropriated to the Bureau of Indian Affairs.

"(d)(1) The Commissioner shall have the power to—

"(A) appoint and fix the compensation of such staff and personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

"(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$200 a day for individuals.

Contracts.

"(2) The authority of the Commissioner to enter into contracts for the provision of legal services for the Commissioner or for the Office of Navajo and Hopi Indian Relocation shall be subject to the availability of funds provided for such purpose by appropriations Acts.

Appropriation
authorization.

"(3) There are authorized to be appropriated for each fiscal year \$100,000 to fund contracts described in paragraph (2).

"(e)(1) The Commissioner is authorized to provide for the administrative, fiscal, and housekeeping services of the Office of Navajo and Hopi Indian Relocation and is authorized to call upon any department or agency of the United States to assist him in implementing the relocation plan, except that the control over and responsibility for completing relocation shall remain in the Commissioner. In any case in which the Office calls upon any such department or agency for assistance under this section, such department or agency shall provide reasonable assistance so requested.

"(2) On failure of any agency to provide reasonable assistance as required under paragraph (1) of this subsection, the Commissioner shall report such failure to the Congress.

"(f) The Office of Navajo and Hopi Indian Relocation shall cease to exist when the President determines that its functions have been fully discharged."

25 USC 640d *et*
seq.

(b) Public Law 93-531 is amended by striking out "the Commission" each place it appears and inserting in lieu thereof "the Commissioner".

25 USC 640d-11
note.

(c)(1) Notwithstanding any other provisions of law or any amendment made by this Act—

(A) the Navajo and Hopi Indian Relocation Commission shall—

(i) continue to exist until the date on which the first Commissioner is confirmed by the Senate,

(ii) have the same structure, powers and responsibilities such Commission had before the enactment of this Act, and

(iii) assume responsibility for the powers and duties transferred to such Commissioner under section 12(c)(2) of Public Law 93-531, as amended by this Act, until the Commissioner is confirmed,

(B) the existing Commissioners shall serve until the new Commissioner is confirmed by the Senate, and

(C) the existing personnel of the Commission shall be transferred to the new Office of Navajo and Hopi Indian Relocation.

(D) The Navajo and Hopi Relocation Commission shall become known as the Office of Navajo and Hopi Indian Relocation on the date on which the first Commissioner is confirmed by the Senate.

(E) Section 13 of Public Law 93-531 (25 U.S.C. 640d-12) is amended to read as follows:

(a) By no later than the date that is 6 months after the date on which the first Commissioner is confirmed by the Senate, the Commissioner shall prepare and submit to the Congress a report concerning the relocation of households and members thereof of a tribe and their personal property, including livestock, from lands partitioned to the other tribe pursuant to this Act.

(b) The report required under subsection (a) shall contain, among other matters, the following:

“(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe;

“(2) the names of all other members of the Navajo Tribe, and other members of the Hopi Tribe, who are eligible for benefits provided under this Act and who have not received all the benefits for which such members are eligible under this Act;

“(3) the fair market value of the habitations and improvements owned by the heads of households identified by the Commissioner is being among the persons named in clause (1) of this subsection; and

“(4) a report on how funds in the Navajo Rehabilitation Trust Funds will be expended to carry out the purposes described in section 32(d).”

Reports.

LOBBYING

Sec. 5. Public Law 93-531 is amended by adding at the end thereof the following new section:

Sec. 31. (a) Except as provided in subsection (b), no person or entity who has entered into a contract with the Commissioner to provide services under this Act may engage in activities designed to influence Federal legislation on any issue relating to the relocation required under this Act.

(b) Subsection (a) shall not apply to the Navajo Tribe or the Hopi Tribe, except that such tribes shall not spend any funds received from the Office in any activities designed to influence Federal legislation.”

25 USC 640d-29.

NEW DEVELOPMENT ON CERTAIN LANDS

SEC. 6. Subsection (f) of section 10 of Public Law 93-531 (25 U.S.C. 640d-9(f)) is amended—

(1) by striking out “Any development” and inserting in lieu thereof “(1) Any development”, and

(2) by adding at the end thereof the following new paragraphs:

“(2) Each Indian tribe which receives a written request for the consent of the Indian tribe to a particular improvement, construction, or other development on the lands to which paragraph (1) applies shall respond in writing to such request by no later than the date that is 30 days after the date on which the Indian tribe receives the request. If the Indian tribe refuse to consent to the improvement, construction, or other development, the response shall include the reasons why consent is being refused.

“(3)(A) Paragraph (1) shall not apply to any improvement, construction, or other development if—

“(i) such improvement, construction, or development does not involve new housing construction, and

Safety.

“(ii) after the Navajo Tribe or Hopi Tribe has refused to consent to such improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Secretary of the Interior determines that such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either tribe.

Safety.

“(B) If a written request for a determination described in subparagraph (A)(ii) is submitted to the Secretary of the Interior after the Navajo Tribe or Hopi Tribe has refused to consent to any improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Secretary shall, by no later than the date that is 45 days after the date on which such request is submitted to the Secretary, determine whether such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either Tribe.

Courts, U.S.
Arizona.

“(C) Any development that is undertaken pursuant to this section shall be without prejudice to the rights of the parties in the civil action pending before the United States District Court for the District of Arizona commenced pursuant to section 8 of this Act, as amended.”.

NAVAJO REHABILITATION TRUST FUND

SEC. 7. Public Law 93-531 is amended by adding at the end thereof the following new section:

25 USC 640d-30.

“**SEC. 32.** (a) There is hereby established in the Treasury of the United States a trust fund to be known as the ‘Navajo Rehabilitation Trust Fund’, which shall consist of the funds transferred under subsection (b) and of the funds appropriated pursuant to subsection (f) and any interest or investment income accrued on such funds.

“(b) All of the net income derived by the Navajo Tribe from the surface and mineral estates of lands located in New Mexico that are

acquired for the benefit of the Navajo Tribe under section 11 shall be deposited into the Navajo Rehabilitation Trust Fund.

“(c) The Secretary shall be the trustee of the Navajo Rehabilitation Trust Fund and shall be responsible for investment of the funds in such Trust Fund.

“(d) Funds in the Navajo Rehabilitation Trust Fund, including any interest or investment accruing thereon, shall be available to the Navajo Tribe, with the approval of the Secretary, solely for purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational, and social condition of families, and Navajo communities, that have been affected by—

“(1) the decision in the Healing case, or related proceedings,

“(2) the provision of this Act, or

“(3) the establishment by the Secretary of the Interior of grazing district number 6 as land for the exclusive use of the Hopi Tribe.

“(e) The Navajo Rehabilitation Trust Fund shall terminate when, upon petition by the Navajo Tribe, the Secretary determines that the goals of the Trust Fund have been met and the United States has been reimbursed for funds appropriated under subsection (f). All funds in the Trust Fund on such date shall be transferred to the general trust funds of the Navajo Tribe.

“(f) There is hereby authorized to be appropriated for the Navajo Rehabilitation Trust Fund not exceed \$10,000,000 in each of fiscal years 1990, 1991, 1992, 1993, 1994 and 1995. The income from the land referred to in subsection (b) of this section shall be used to reimburse the General Fund of the United States Treasury for amounts appropriated to the Fund.”.

Appropriation
authorization.

LANDS TRANSFERRED OR ACQUIRED FOR THE NAVAJO TRIBE

SEC. 8. Subsection (h) of section 11 of Public Law 93-531 (25 U.S.C. 640d-10(h)) is amended by striking out “the date of this subsection who are awaiting relocation under this Act” and inserting in lieu thereof “the date of enactment of this Act: *Provided*, That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this Act shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this Act”.

PROVISION OF ATTORNEY FEES FOR THE SAN JUAN SOUTHERN PAIUTE TRIBE

SEC. 9. (a) Subsection (e) of section 8 of Public Law 93-531 (25 U.S.C. 640d-7(e)) is amended by inserting a comma and the words “San Juan Southern Paiute” after the word “Navajo”.

(b) Section 8 of Public Law 93-531 is amended by adding at the end thereof the following new subsection:

“(f)(1) Any funds made available for the San Juan Southern Paiute Tribe to pay for attorney’s fees shall be paid directly to the tribe’s attorneys of record until such tribe is acknowledged as an Indian tribe by the United States: *Provided*, That the tribe’s eligibility for such payments shall cease once a decision by the Secretary of the Interior declining to acknowledge such tribe becomes final and no longer appealable.

“(2) Nothing in this subsection shall be interpreted as a congressional acknowledgement of the San Juan Southern Paiute as an

Indian tribe or as affecting in any way the San Juan Southern Paiute Tribe's Petition for Recognition currently pending with the Secretary of the Interior.

Appropriation
authorization.

"(3) There is hereby authorized to be appropriated not to exceed \$250,000 to pay for the legal expenses incurred by the Southern Paiute Tribe on legal action arising under this section prior to enactment of the Navajo and Hopi Indian Relocation Amendments of 1988."

25 USC 640d-14.

SEC. 10. Section 15 of Public Law 93-531 is amended by adding the following new subsection (g) at the end thereof:

Courts, U.S.
Arizona.

"(g) Notwithstanding any other provision of law, appeals from any eligibility determination of the Relocation Commission, irrespective of the amount in controversy, shall be brought in the United States District Court for the District of Arizona."

Approved November 16, 1988.

LEGISLATIVE HISTORY—S. 1236:

HOUSE REPORTS: No. 100-1032 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-425 (Select Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Aug. 8, considered and passed Senate.

Oct. 3, 4, considered and passed House, amended.

Oct. 13, Senate concurred in House amendments.

Public Law 100-667
100th Congress

An Act

To amend the Act entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes".

Nov. 16, 1988
[S. 1883]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—TRADEMARK LAW REVISION

Trademark Law
Revision Act of
1988.
15 USC 1051
note.

SEC. 101. SHORT TITLE.

This title may be cited as the "Trademark Law Revision Act of 1988".

SEC. 102. REFERENCE TO THE TRADEMARK ACT OF 1946.

Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 and following) (commonly referred to as the "Trademark Act of 1946").

SEC. 103. APPLICATION TO REGISTER TRADEMARKS.

Section 1 (15 U.S.C. 1051) is amended—

(1) in the matter before subsection (a), by striking out "may register his" and inserting in lieu thereof "may apply to register his or her";

(2) by redesignating paragraphs (1), (2), and (3) of subsection (a) as subparagraphs (A), (B), and (C), respectively;

(3) by redesignating subsections (a), (b), and (c) as paragraphs (1), (2), and (3), respectively;

(4) by inserting "(a)" after "SECTION 1.";

(5) in subsection (a)(1)(A), as redesignated by this section—

(A) by striking out "applied to" and inserting in lieu thereof "used on or in connection with"; and

(B) by striking out "goods in connection" and inserting in lieu thereof "goods on or in connection";

(6) in subsection (a)(1)(C), as redesignated by this section, by striking out "actually";

(7) in subsection (a)(2), as redesignated by this section, by striking out "filing" and inserting in lieu thereof "prescribed";

(8) by redesignating subsection (d) as subsection (e); and

(9) by inserting before subsection (e), as redesignated by paragraph (8) of this section, the following:

"(b) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in

commerce may apply to register the trademark under this Act on the principal register hereby established:

“(1) By filing in the Patent and Trademark Office—

“(A) a written application, in such form as may be prescribed by the Commissioner, verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, specifying applicant’s domicile and citizenship, applicant’s bona fide intention to use the mark in commerce, the goods on or in connection with which the applicant has a bona fide intention to use the mark and the mode or manner in which the mark is intended to be used on or in connection with such goods, including a statement to the effect that the person making the verification believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the verification, to be entitled to use the mark in commerce, and that no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; however, except for applications filed pursuant to section 44, no mark shall be registered until the applicant has met the requirements of subsection (d) of this section; and

“(B) a drawing of the mark.

“(2) By paying in the Patent and Trademark Office the prescribed fee.

“(3) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.

“(c) At any time during examination of an application filed under subsection (b), an applicant who has made use of the mark in commerce may claim the benefits of such use for purposes of this Act, by amending his or her application to bring it into conformity with the requirements of subsection (a).

“(d)(1) Within six months after the date on which the notice of allowance with respect to a mark is issued under section 13(b)(2) to an applicant under subsection (b) of this section, the applicant shall file in the Patent and Trademark Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Commissioner and payment of the prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant’s first use of the mark in commerce, those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce, and the mode or manner in which the mark is used on or in connection with such goods or services. Subject to examination and acceptance of the statement of use, the mark shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued for those goods or services recited in the statement of use for which the mark is entitled to registration, and notice of registration shall be published in the Official Gazette of the Patent and Trademark Office. Such examination may include an examination of the factors set forth in subsections (a) through (e) of section 2. The

notice of registration shall specify the goods or services for which the mark is registered.

"(2) The Commissioner shall extend, for one additional 6-month period, the time for filing the statement of use under paragraph (1), upon written request of the applicant before the expiration of the 6-month period provided in paragraph (1). In addition to an extension under the preceding sentence, the Commissioner may, upon a showing of good cause by the applicant, further extend the time for filing the statement of use under paragraph (1) for periods aggregating not more than 24 months, pursuant to written request of the applicant made before the expiration of the last extension granted under this paragraph. Any request for an extension under this paragraph shall be accompanied by a verified statement that the applicant has a continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee. The Commissioner shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.

"(3) The Commissioner shall notify any applicant who files a statement of use of the acceptance or refusal thereof and, if the statement of use is refused, the reasons for the refusal. An applicant may amend the statement of use.

"(4) The failure to timely file a verified statement of use under this subsection shall result in abandonment of the application."

SEC. 104. TRADEMARKS REGISTRABLE ON PRINCIPAL REGISTER.

Section 2 (15 U.S.C. 1052) is amended—

(1) by amending subsection (d) to read as follows:

"(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That if the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this Act; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe condi-

tions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.”;

(2) in subsection (e) by striking out “applied to” each place it appears and inserting in lieu thereof “used on or in connection with”; and

(3) in subsection (f)—

(A) by striking out “applied to” and inserting in lieu thereof “used on or in connection with”; and

(B) by striking out “five years” and all that follows through the end of the subsection and inserting in lieu thereof “five years before the date on which the claim of distinctiveness is made.”.

SEC. 105. SERVICE MARKS REGISTRABLE.

Section 3 (15 U.S.C. 1053) is amended—

(1) in the first sentence—

(A) by striking out “used in commerce”; and

(B) by striking out “, except when” and all that follows through “mark is used”; and

(2) by striking out the second sentence.

SEC. 106. COLLECTIVE AND CERTIFICATION MARKS REGISTRABLE.

Section 4 (15 U.S.C. 1054) is amended—

(1) in the first sentence—

(A) by striking out “origin used in commerce,” and inserting in lieu thereof “origin,”; and

(B) by striking out “except when” and inserting in lieu thereof “except in the case of certification marks when”; and

(2) by striking out the second sentence.

SEC. 107. USE BY RELATED COMPANIES.

Section 5 (15 U.S.C. 1055) is amended by adding at the end thereof the following: “If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.”.

SEC. 108. DISCLAIMER OF UNREGISTRABLE MATTER.

Section 6(b) (15 U.S.C. 1056(b)) is amended by striking out “paragraph (d)” and inserting in lieu thereof “subsection (e)”.

SEC. 109. CERTIFICATE OF REGISTRATION ON THE PRINCIPAL REGISTER.

Section 7 (15 U.S.C. 1057) is amended—

(1) by amending subsection (b) to read as follows:

“(b) A certificate of registration of a mark upon the principal register provided by this Act shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.”;

(2) by redesignating subsections (c), (d), (e), (f), and (g) as subsections (d), (e), (f), (g), and (h), respectively;

(3) by inserting after subsection (b) the following:

“(c) Contingent on the registration of a mark on the principal register provided by this Act, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing—

“(1) has used the mark;

“(2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or

“(3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 44(d) to register the mark which is pending or has resulted in registration of the mark.”;

(4) in subsection (d), as redesignated by paragraph (2) of this section, by striking out “fee herein provided” and inserting in lieu thereof “prescribed fee”;

(5) in subsection (f), as redesignated by paragraph (2) of this section, by striking out “fee required by law” and inserting in lieu thereof “prescribed fee”; and

(6) in subsection (h), as redesignated by paragraph (2) of this section, by striking out “required fee” and inserting in lieu thereof “prescribed fee”.

SEC. 110. DURATION OF REGISTRATION.

Section 8(a) (15 U.S.C. 1058(a)) is amended—

(1) by striking out “twenty” and inserting in lieu thereof “ten”; and

(2) by striking out “showing that said mark is in use in commerce or showing that its” and inserting in lieu thereof “setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, or showing that any”.

SEC. 111. RENEWAL OF REGISTRATION.

Section 9 (15 U.S.C. 1059) is amended—

(1) in subsection (a) by striking out “twenty” and inserting in lieu thereof “ten”; and

(2) in subsection (c) by striking out “1(d) hereof” and inserting in lieu thereof “1(e) of this Act”.

SEC. 112. ASSIGNMENT.

Section 10 (15 U.S.C. 1060) is amended—

(1) in the first sentence by striking out “and in any such assignment” and inserting in lieu thereof the following: “. However, no application to register a mark under section 1(b) shall be assignable prior to the filing of the verified statement of use under section 1(d), except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section”; and

(2) in the last paragraph by striking out “1(d) hereof” and inserting in lieu thereof “1(e) of this Act”.

SEC. 113. EXAMINATION OF APPLICATION.

Section 12(a) (15 U.S.C. 1062(a)) is amended—

- (1) by striking out “fee herein provided” and inserting in lieu thereof “prescribed fee”; and
- (2) by striking out “to registration, the” and inserting in lieu thereof “to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1(d) of this Act, the”.

SEC. 114. OPPOSITION TO MARKS.

Section 13 (15 U.S.C. 1063) is amended—

- (1) by inserting “(a)” before “Any person”;
- (2) by striking out “required fee” and inserting in lieu thereof “prescribed fee”; and
- (3) by adding at the end thereof the following:
“(b) Unless registration is successfully opposed—
“(1) a mark entitled to registration on the principal register based on an application filed under section 1(a) or pursuant to section 44 shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued, and notice of the registration shall be published in the Official Gazette of the Patent and Trademark Office; or
“(2) a notice of allowance shall be issued to the applicant if the applicant applied for registration under section 1(b).”.

SEC. 115. CANCELLATION OF REGISTRATIONS.

Section 14 (15 U.S.C. 1064) is amended—

- (1) in the matter preceding subsection (a)—
 - (A) by inserting “as follows” after “be filed”; and
 - (B) by striking out “1905-” and inserting in lieu thereof “1905.”;
- (2) in subsection (a)—
 - (A) by striking out “(a) within” and inserting in lieu thereof “(1) Within”; and
 - (B) by striking out “; or” and inserting in lieu thereof a period;
- (3) in subsection (b)—
 - (A) by striking out “(b) within” and inserting in lieu thereof “(2) Within”; and
 - (B) by striking out “; or” and inserting in lieu thereof a period;
- (4) by amending subsection (c) to read as follows:
“(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsection (a), (b), or (c) of section 2 for a registration under this Act, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a

name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.”;

(5) in subsection (d)—

(A) by striking out “(d) at” and inserting in lieu thereof “(4) At”; and

(B) by striking out “; or” and inserting in lieu thereof a period;

(6) in subsection (e)—

(A) by striking out “(e) at” and inserting in lieu thereof “(5) At”; and

(B) by striking out “(1)”, “(2)”, “(3)”, and “(4)” and inserting in lieu thereof “(A)”, “(B)”, “(C)”, and “(D)”, respectively; and

(7) in the proviso at the end of the section by striking out “subsections (c) and (e)” and inserting in lieu thereof “paragraphs (3) and (5)”.

SEC. 116. INCONTESTABILITY OF RIGHT TO USE MARK.

Section 15 (15 U.S.C. 1065) is amended—

(1) by striking out “subsections (c) and (e)” and inserting in lieu thereof “paragraphs (3) and (5)”;

(2) in paragraph (3) by striking out “subsections (1) and (2) hereof” and inserting in lieu thereof “paragraphs (1) and (2) of this section”; and

(3) in paragraph (4) by striking out “the common descriptive name of any article or substance, patented or otherwise” and inserting in lieu thereof “the generic name for the goods or services or a portion thereof, for which it is registered”.

SEC. 117. INTERFERENCE.

Section 16 (15 U.S.C. 1066) is amended by striking out “applied to the goods or when used in connection with the services” and inserting in lieu thereof “used on or in connection with the goods or services”.

SEC. 118. ACTION OF COMMISSIONER IN PROCEEDINGS.

Section 18 (15 U.S.C. 1068) is amended—

(1) by striking out “or restrict” and inserting in lieu thereof “the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register”;

(2) by striking out “or may refuse” and inserting in lieu thereof “may refuse”; and

(3) adding at the end thereof the following: “However, no final judgment shall be entered in favor of an applicant under section 1(b) before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c).”.

SEC. 119. APPLICATION OF EQUITABLE PRINCIPLES.

Section 19 (15 U.S.C. 1069) is amended by striking out the second sentence.

SEC. 120. APPEALS.

Section 21 (15 U.S.C. 1071) is amended—

(1) in subsection (a)(1)—

(A) by striking out “section 21(b) hereof” each place it appears and inserting in lieu thereof “subsection (b) of this section”;

(B) by striking out “section 21(a)(2) hereof” and inserting in lieu thereof “paragraph (2) of this subsection”; and

(C) by striking out “said section 21(b)” and inserting in lieu thereof “subsection (b) of this section”;

(2) in subsection (a)(4), by adding at the end thereof the following: “However, no final judgment shall be entered in favor of an applicant under section 1(b) before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c).”;

(3) in subsection (b)(1)—

(A) by striking out “section 21(a) hereof” and inserting in lieu thereof “subsection (a) of this section”;

(B) by striking out “section 21(a)” and inserting in lieu thereof “subsection (a) of this section”; and

(C) by adding at the end thereof the following: “However, no final judgment shall be entered in favor of an applicant under section 1(b) before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c).”; and

(4) in subsection (b)(3), by striking out “(3)” and all that follows through the end of the first sentence and inserting in lieu thereof the following:

“(3) In any case where there is no adverse party, a copy of the complaint shall be served on the Commissioner, and, unless the court finds the expenses to be unreasonable, all the expenses of the proceeding shall be paid by the party bringing the case, whether the final decision is in favor of such party or not.”.

SEC. 121. SUPPLEMENTAL REGISTER.

Section 23 (15 U.S.C. 1091) is amended—

(1) by inserting “(a)” before “In addition” in the first paragraph;

(2) by inserting “(b)” before “Upon the” in the second paragraph;

(3) by inserting “(c)” before “For the purposes” in the third paragraph;

(4) in subsection (a), as designated by paragraph (1) of this section—

(A) by striking out “paragraphs (a),” and inserting in lieu thereof “subsections (a),”;

(B) by striking out “have been in lawful use in commerce by the proprietor thereof, upon” and inserting in lieu thereof “are in lawful use in commerce by the owner thereof, on”;

(C) by striking out “for the year preceding the filing of the application”; and

(D) by inserting before “section 1” the following: “subsections (a) and (e) of”;

(5) in subsection (b), as designated by paragraph (2) of this section, by striking out “fee herein provided” and inserting in lieu thereof “prescribed fee”; and

(6) by striking out the last paragraph.

122. CANCELLATION ON SUPPLEMENTAL REGISTER.

Section 24 (15 U.S.C. 1092) is amended—

- (1) by striking out “verified” in the second sentence;
- (2) by striking out “was not entitled to register the mark at the time of his application for registration thereof,” and inserting in lieu thereof “is not entitled to registration,”;
- (3) by striking out “is not used by the registrant or”; and
- (4) by adding at the end thereof the following: “However, no final judgment shall be entered in favor of an applicant under section 1(b) before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 7(c).”.

123. PROVISIONS OF ACT APPLICABLE TO SUPPLEMENTAL REGISTER.

Section 26 (15 U.S.C. 1094) is amended—

- (1) by inserting “1(b),” after “sections”; and
- (2) by inserting “7(c),” after “7(b)”.

124. REGISTRATION ON PRINCIPAL REGISTER NOT PRECLUDED.

Section 27 (15 U.S.C. 1095) is amended by adding at the end thereof the following: “Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness.”.

125. NOTICE OF REGISTRATION.

Section 29 (15 U.S.C. 1111) is amended by striking out “as used”.

126. CLASSIFICATION OF GOODS AND SERVICES.

Section 30 (15 U.S.C. 1112) is amended—

- (1) by inserting “or registrant’s” after “applicant’s”;
- (2) by striking out “may file an application” and inserting in lieu thereof “may apply”;
- (3) by striking out “goods and services upon or in connection with which he is actually using the mark:” and inserting in lieu thereof “goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce:”; and
- (4) by amending the proviso to read as follows: “*Provided*, That if the Commissioner by regulation permits the filing of an application for the registration of a mark for goods or services which fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark.”.

127. INNOCENT INFRINGEMENT AND VIOLATIONS OF SECTION 43(a).

Section 32(2) (15 U.S.C. 1114(2)) is amended to read as follows:

- (2) Notwithstanding any other provision of this Act, the remedies available to the owner of a right infringed under this Act or to a person bringing an action under section 43(a) shall be limited as follows:
- “(A) Where an infringer or violator is engaged solely in the business of printing the mark or violating matter for others and establishes that he or she was an innocent infringer or innocent violator, the owner of the right infringed or person bringing the action under section 43(a) shall be entitled as against such

infringer or violator only to an injunction against future printing.

“(B) Where the infringement or violation complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical or in an electronic communication as defined in section 2510(12) of title 18, United States Code, the remedies of the owner of the right infringed or person bringing the action under section 43(a) as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers and innocent violators.

“(C) Injunctive relief shall not be available to the owner of the right infringed or person bringing the action under section 43(a) with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter or violating matter where restraining the dissemination of such infringing matter or violating matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication after the regular time for such delivery or transmission, and such delay would be due to the method by which publication and distribution of such periodical or transmission of such electronic communication is customarily conducted in accordance with sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter or violating matter.

“(D) As used in this paragraph—

“(i) the term ‘violator’ means a person who violates section 43(a); and

“(ii) the term ‘violating matter’ means matter that is the subject of a violation under section 43(a).”.

SEC. 128. REMEDIES.

(a) **PRIMA FACIE EVIDENCE OF EXCLUSIVE RIGHT TO USE MARK.**—Section 33(a) (15 U.S.C. 1115(a)) is amended—

(1) by inserting “the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the” after “prima facie evidence of”;

(2) by inserting “or in connection with” after “in commerce on”;

(3) by striking out “an opposing party” and inserting in lieu thereof “another person”; and

(4) by inserting “, including those set forth in subsection (b),” after “or defect”.

(b) **CONCLUSIVE EVIDENCE OF EXCLUSIVE RIGHT TO USE MARK.**—Section 33(b) (15 U.S.C. 1115(b)) is amended—

(1) in subsection (b) by amending the matter before paragraph

(1) to read as follows:

“(b) To the extent that the right to use the registered mark has become incontestable under section 15, the registration shall be conclusive evidence of the validity of the registered mark and of the

tration of the mark, of the registrant's ownership of the mark, of the registrant's exclusive right to use the registered mark in commerce. Such conclusive evidence shall relate to the exclusive right to use the mark on or in connection with the goods or services specified in the affidavit filed under the provisions of section 15, or the renewal application filed under the provisions of section 9 if the goods or services specified in the renewal are fewer in number, subject to any conditions or limitations in the registration or in such affidavit or renewal application. Such conclusive evidence of the right to use the registered mark shall be subject to proof of infringement as defined in section 32, and shall be subject to the following uses or defects:";

(2) in paragraph (3) by inserting "on or" after "goods or services";

(3) in paragraph (4)—

(A) by striking out "trade or service"; and

(B) by striking out "to users";

(4) in paragraph (5) by striking out "registration of the mark under this Act or" and inserting in lieu thereof "(A) the date of constructive use of the mark established pursuant to section 7(c), (B) the registration of the mark under this Act if the application for registration is filed before the effective date of the Trademark Law Revision Act of 1988, or (C)";

(5) in paragraph (7) by striking out the period and inserting in lieu thereof "; or"; and

(6) by adding at the end of the subsection the following:

"That equitable principles, including laches, estoppel, and rescission, are applicable."

INJUNCTIONS.—Section 34(a) (15 U.S.C. 1116(a)) is amended in first sentence by inserting "or to prevent a violation under section 43(a)" after "Office".

NOTICE OF SUIT TO COMMISSIONER.—Section 34(c) (15 U.S.C. 1116(c)) is amended—

(1) by striking out "proceeding arising" and inserting in lieu thereof "proceeding involving a mark registered"; and

(2) by striking out "decision is rendered, appeal taken or a decree issued" and inserting in lieu thereof "judgment is entered or an appeal is taken".

CIVIL ACTIONS ARISING FROM USE OF COUNTERFEIT MARKS.—Section 34(d)(1)(B) (15 U.S.C. 1116(d)(1)(B)) is amended by inserting "or" after "designation used".

129. RECOVERY FOR VIOLATION OF RIGHTS.

Section 35(a) (15 U.S.C. 1117(a)) is amended in the first sentence by inserting ", or a violation under section 43(a)," after "Office".

130. DESTRUCTION OF INFRINGING ARTICLES.

Section 36 (15 U.S.C. 1118) is amended in the first sentence—

(1) by inserting ", or a violation under section 43(a)," after "Office"; and

(2) by inserting after "registered mark" the following: "or, in the case of a violation of section 43(a), the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation,".

SEC. 131. JURISDICTION.

(a) **JURISDICTION OF COURTS.**—Section 39 (15 U.S.C. 1121) is amended by inserting “(a)” after “SEC. 39.”.

(b) **CERTAIN ACTIONS BY STATES PRECLUDED.**—Section 39a (15 U.S.C. 1121a) is amended—

15 USC 1121a,
1121.

(1) by striking out “SEC. 39a.” and inserting in lieu thereof “(b)”;

(2) by striking out “servicemarks” each place it appears and inserting in lieu thereof “service marks”.

SEC. 132. UNREGISTERED MARKS, DESCRIPTIONS, AND REPRESENTATIONS.

Section 43(a) (15 U.S.C. 1125(a)) is amended to read as follows:

“(a) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

“(1) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

“(2) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.”.

SEC. 133. INTERNATIONAL MATTERS.

Section 44 (15 U.S.C. 1126) is amended—

(1) in subsections (c), (d), (f), (g), and (h) by striking out “paragraph (b)” each place it appears and inserting in lieu thereof “subsection (b)”;

(2) in subsection (a) by striking out “herein prescribed” and inserting in lieu thereof “required in this Act”;

(3) in subsection (d) by striking out “sections 1, 2, 3, 4, or 23” and inserting in lieu thereof “section 1, 3, 4, 23, or 44(e)”;

(4) in subsection (d)(2) by striking out “but use in commerce need not be alleged” and inserting in lieu thereof “including a statement that the applicant has a bona fide intention to use the mark in commerce”;

(5) in subsection (d)(3) by striking out “foreing” and inserting in lieu thereof “foreign”;

(6) in subsection (e) by adding at the end thereof the following: “The application must state the applicant's bona fide intention to use the mark in commerce, but use in commerce shall not be required prior to registration.”;

(7) in subsection (f) by striking out “paragraphs (c), (d),” and inserting in lieu thereof “subsections (c), (d),”; and

(8) in subsection (i) by striking out “paragraph (b) hereof” and inserting in lieu thereof “subsection (b) of this section”.

SEC. 134. CONSTRUCTION AND DEFINITIONS.

Section 45 (15 U.S.C. 1127) is amended—

(1) by amending the paragraph defining "related company" to read as follows:

"The term 'related company' means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.";

(2) by amending the paragraph defining "trade name" and "commercial name" to read as follows:

"The terms 'trade name' and 'commercial name' mean any name used by a person to identify his or her business or vocation.";

(3) by amending the paragraph defining "trademark" to read as follows:

"The term 'trademark' includes any word, name, symbol, or device, or any combination thereof—

"(1) used by a person, or

"(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this Act,

to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.";

(4) by amending the paragraph defining "service mark" to read as follows:

"The term 'service mark' means any word, name, symbol, or device, or any combination thereof—

"(1) used by a person, or

"(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this Act,

to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.";

(5) by amending the paragraph defining "certification mark" to read as follows:

"The term 'certification mark' means any word, name, symbol, or device, or any combination thereof—

"(1) used by a person other than its owner, or

"(2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this Act,

to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.";

(6) by amending the paragraph defining "collective mark" to read as follows:

"The term 'collective mark' means a trademark or service mark—

"(1) used by the members of a cooperative, an association, or other collective group or organization, or

"(2) which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register established by this Act,

and includes marks indicating membership in a union, an association, or other organization.”;

(7) by amending the paragraph defining “mark” to read as follows:

“The term ‘mark’ includes any trademark, service mark, collective mark, or certification mark.”;

(8) by amending the matter which appears between the paragraph defining “mark”, and the paragraph defining “colorable imitation” to read as follows:

“The term ‘use in commerce’ means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this Act, a mark shall be deemed to be in use in commerce—

“(1) on goods when—

“(A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and

“(B) the goods are sold or transported in commerce, and

“(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

“A mark shall be deemed to be ‘abandoned’ when either of the following occurs:

“(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie evidence of abandonment. ‘Use’ of a mark means the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

“(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.”.

SEC. 135. PENDING APPLICATIONS.

The Trademark Act of 1946 is amended by adding at the end thereof the following:

“SEC. 51. All certificates of registration based upon applications for registration pending in the Patent and Trademark Office on the effective date of the Trademark Law Revision Act of 1988 shall remain in force for a period of 10 years.”.

SEC. 136. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective on the date which is one year after the date of enactment of this Act.

15 USC 1058
note.

15 USC 1051
note.

TITLE II—SATELLITE HOME VIEWER ACT

Satellite Home Viewer Act of 1988.
Communications and telecommunications.
17 USC 101 note.

SEC. 201. SHORT TITLE.

This title may be cited as the "Satellite Home Viewer Act of 1988".

SEC. 202. AMENDMENTS TO TITLE 17, UNITED STATES CODE.

Title 17, United States Code, is amended as follows:

(1) Section 111 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (3) by striking "or" at the end;

(ii) by redesignating paragraph (4) as paragraph (5);

and

(iii) by inserting the following after paragraph (3):

"(4) the secondary transmission is made by a satellite carrier for private home viewing pursuant to a statutory license under section 119; or"; and

(B) in subsection (d)(1)(A) by inserting before "Such statement" the following:

"In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119."

(2) Chapter 1 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

"(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

"(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection, secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

"(2) NETWORK STATIONS.—

"(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection, secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

"(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

"(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after the effective date of the Satellite Home Viewer Act of 1988, or 90 days after commencing such secondary transmissions, whichever is later, submit to the network that owns or is affiliated with the network station a list identifying (by street address including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights, on or after the effective date of the Satellite Home Viewer Act of 1988, a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

Public
information.

"(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty information required by subsection (b), or has failed to make the submission to networks required by paragraph (2)(C).

"(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

"(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

“(A) **INDIVIDUAL VIOLATIONS.**—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

“(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

“(ii) any statutory damages shall not exceed \$5 for such subscriber for each month during which the violation occurred.

“(B) **PATTERN OF VIOLATIONS.**—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

“(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$250,000 for each 6-month period during which the pattern or practice was carried out; and

“(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$250,000 for each 6-month period during which the pattern or practice was carried out.

“(C) **PREVIOUS SUBSCRIBERS EXCLUDED.**—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before the date of the enactment of the Satellite Home Viewer Act of 1988.

“(6) **DISCRIMINATION BY A SATELLITE CARRIER.**—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

“(7) **GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.**—The statutory license created by this section shall apply only to

secondary transmissions to households located in the United States.

“(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

Regulations.

“(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall, after consultation with the Copyright Royalty Tribunal, prescribe by regulation—

“(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may, after consultation with the Copyright Royalty Tribunal, from time to time prescribe by regulation; and

“(B) a royalty fee for that 6-month period, computed by—

“(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 12 cents;

“(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 3 cents; and

“(iii) adding together the totals computed under clauses (i) and (ii).

“(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Copyright Royalty Tribunal as provided by this title.

“(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Tribunal under paragraph (4).

“(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

Regulations.

“(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as

to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

“(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, the Tribunal shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Tribunal finds the existence of a controversy, the Tribunal shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

“(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

“(c) DETERMINATION OF ROYALTY FEES.—

“(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until December 31, 1992, unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).

“(2) FEE SET BY VOLUNTARY NEGOTIATION.—

“(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

“(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Tribunal shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

“(C) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in

Federal
Register,
publication.

Regulations.

accordance with regulations that the Register of Copyrights shall prescribe.

“(D) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1994.

“(3) FEE SET BY COMPULSORY ARBITRATION.—

Federal
Register,
publication.

“(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before December 31, 1991, the Copyright Royalty Tribunal shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.

“(B) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fail to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fail to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively. The arbitrators selected under this subparagraph shall constitute an Arbitration Panel.

“(C) ARBITRATION PROCEEDING.—The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

“(D) FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the Arbitration Panel shall consider the approximate average cost to a cable system for the right to secondarily transmit to the

public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

“(i) To maximize the availability of creative works to the public.

“(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

“(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

“(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

“(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

“(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (E), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly inconsistent with the criteria set forth in subparagraph (D). If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

Federal
Register,
publication.

Public
information.

“(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE.—The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribu-

nal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F), and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.

“(H) **PERSONS SUBJECT TO ROYALTY FEE.**—The royalty fee adopted or ordered under subparagraph (F) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).

“(4) **JUDICIAL REVIEW.**—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).

“(d) **DEFINITIONS.**—As used in this section—

“(1) **DISTRIBUTOR.**—The term ‘distributor’ means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

“(2) **NETWORK STATION.**—The term ‘network station’ has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.

“(3) **PRIMARY NETWORK STATION.**—The term ‘primary network station’ means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

“(4) **PRIMARY TRANSMISSION.**—The term ‘primary transmission’ has the meaning given that term in section 111(f) of this title.

“(5) **PRIVATE HOME VIEWING.**—The term ‘private home viewing’ means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a

primary transmission of a television station licensed by the Federal Communications Commission.

“(6) **SATELLITE CARRIER.**—The term ‘satellite carrier’ means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

“(7) **SECONDARY TRANSMISSION.**—The term ‘secondary transmission’ has the meaning given that term in section 111(f) of this title.

“(8) **SUBSCRIBER.**—The term ‘subscriber’ means an individual who receives a secondary transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

“(9) **SUPERSTATION.**—The term ‘superstation’ means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

“(10) **UNSERVED HOUSEHOLD.**—The term ‘unserved household’, with respect to a particular television network, means a household that—

“(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

“(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

“(e) **EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.**—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.”.

(3) Section 501 of title 17, United States Code, is amended by adding at the end the following:

“(e) With respect to any secondary transmission that is made by a satellite carrier of a primary transmission embodying the performance or display of a work and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.”.

(4) Section 801(b)(3) of title 17, United States Code, is amended by striking “and 116” and inserting “, 116, and 119(b)”.

(5) Section 804(d) of title 17, United States Code, is amended by striking “sections 111 or 116” and inserting “section 111, 116, or 119”.

(6) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by adding at the end the following new item:

“119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing.”.

SEC. 203. SYNDICATED EXCLUSIVITY; REPORT ON DISCRIMINATION.

Title VII of The Communications Act of 1934 (47 U.S.C. 601 et seq.) is amended by adding at the end the following:

“SYNDICATED EXCLUSIVITY

47 USC 612.

“SEC. 712. (a) The Federal Communications Commission shall, within 120 days after the effective date of the Satellite Home Viewer Act of 1988, initiate a combined inquiry and rulemaking proceeding for the purpose of—

“(1) determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private home viewing of secondary transmissions by satellite of broadcast station signals similar to the rules issued by the Commission with respect to syndicated exclusivity and cable television; and

“(2) adopting such rules if the Commission considers the imposition of such rules to be feasible.

“(b) In the event that the Commission adopts such rules, any willful and repeated secondary transmission made by a satellite carrier to the public of a primary transmission embodying the performance or display of a work which violates such Commission rules shall be subject to the remedies, sanctions, and penalties provided by title V and section 705 of this Act.

“DISCRIMINATION

47 USC 613.

“SEC. 713. The Federal Communications Commission shall, within 1 year after the effective date of the Satellite Home Viewer Act of 1988, prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on whether, and the extent to which, there exists discrimination described in section 119(a)(6) of title 17, United States Code.”.

SEC. 204. INQUIRY ON ENCRYPTION STANDARD.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended by adding at the end thereof the following:

“(f) Within 6 months after the date of enactment of the Satellite Home Viewer Act of 1988, the Federal Communications Commission shall initiate an inquiry concerning the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing. In conducting such inquiry, the Commission shall take into account—

“(1) consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

“(2) incorporation of technological enhancements, including advanced television formats;

“(3) whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

“(4) the costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable systems and satellite master antenna television systems;

“(5) the effect of any such standard on competition in the manufacture of decryption equipment; and

“(6) the impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

“(g) If the Commission finds, based on the information gathered from the inquiry required by subsection (f), that a universal encryption standard is necessary and in the public interest, the Commission shall initiate a rulemaking to establish such a standard.”.

SEC. 205. PIRACY OF SATELLITE CABLE PROGRAMMING.

Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

Law
enforcement and
crime.

(1) in subsection (c)—

(A) by striking “and” at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting “; and”; and

(C) by adding at the end the following:

“(6) the term ‘any person aggrieved’ shall include any person with proprietary rights in the intercepted communication by wire or radio, including wholesale or retail distributors of satellite cable programming, and, in the case of a violation of paragraph (4) of subsection (d), shall also include any person engaged in the lawful manufacture, distribution, or sale of equipment necessary to authorize or receive satellite cable programming.”;

(2) in subsection (d)(1), by striking “\$1,000” and inserting “\$2,000”;

(3) in paragraph (2) of subsection (d), by striking “\$25,000” and all that follows through the end of that paragraph and inserting “\$50,000 or imprisoned for not more than 2 years, or both, for the first such conviction and shall be fined not more than \$100,000 or imprisoned for not more than 5 years, or both, for any subsequent conviction.”;

(4) in subsection (d)(3)(A), by inserting “or paragraph (4) of subsection (d)” immediately after “subsection (a)”;

(5) in subsection (d)(3)(B) by striking “may” the first time it appears;

(6) in subsection (d)(3)(B)(i), by inserting “may” immediately before “grant”;

(7) in subsection (d)(3)(B)(ii), by inserting “may” immediately before “award”;

(8) in subsection (d)(3)(B)(iii), by inserting “shall” immediately before “direct”;

(9) in subsection (d)(3)(C)(i)(II)—

(A) by inserting “of subsection (a)” immediately after “violation”;

(B) by striking “\$250” and inserting “\$1,000”; and

(C) by inserting immediately before the period the following: “; and for each violation of paragraph (4) of this subsection involved in the action an aggrieved party may recover statutory damages in a sum not less than \$10,000, or more than \$100,000, as the court considers just”;

(10) in subsection (d)(3)(C)(ii), by striking “\$50,000” and inserting “\$100,000 for each violation of subsection (a)”;

(11) in subsection (d)(3)(C)(iii), by striking “\$100” and inserting “\$250”; and

(12) by striking paragraph (4) of subsection (d) and inserting the following:

“(4) Any person who manufactures, assembles, modifies, imports, exports, sells, or distributes any electronic, mechanical, or other device or equipment, knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming, or is intended for any other activity prohibited by subsection (a), shall be fined not more than \$500,000 for each violation, or imprisoned for not more than 5 years for each violation, or both. For purposes of all penalties and remedies established for violations of this paragraph, the prohibited activity established herein as it applies to each such device shall be deemed a separate violation.”

17 USC 119 note. **SEC. 206. EFFECTIVE DATE.**

This title and the amendments made by this title take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 202 of this Act, takes effect on the date of the enactment of this Act.

17 USC 119 note. **SEC. 207. TERMINATION.**

This title and the amendments made by this title (other than the amendments made by section 205) cease to be effective on December 31, 1994.

Approved November 16, 1988.

LEGISLATIVE HISTORY—S. 1883 (H.R. 5372):

HOUSE REPORTS: No. 100-1028 accompanying H.R. 5372 (Comm. on the Judiciary).

SENATE REPORTS: No. 100-515 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

May 13, considered and passed Senate.

Oct. 19, considered and passed House, amended.

Oct. 20, Senate concurred in House amendment.

Public Law 100-668
100th Congress

An Act

To designate wilderness within Olympic National Park, Mount Rainier National Park, and North Cascades National Park Service Complex in the State of Washington, and for other purposes.

Nov. 16, 1988
[S. 2165]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Washington Park Wilderness Act of 1988".

Washington
Park Wilderness
Act of 1988.
16 USC 90 note.

TITLE I—OLYMPIC NATIONAL PARK WILDERNESS

SEC. 101. DESIGNATION.

(a) **WILDERNESS.**—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.; 78 Stat. 890), certain lands in the Olympic National Park, Washington, which—

16 USC 1132
note.

(1) comprise approximately eight hundred and seventy-six thousand six hundred and sixty-nine acres of wilderness, and approximately three hundred and seventy-eight acres of potential wilderness additions, and

(2) are depicted on a map entitled "Wilderness Boundary, Olympic National Park, Washington", numbered 149/60,051A and dated August 1988,

are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System. Such lands shall be known as the Olympic Wilderness.

SEC. 102. WOLF CREEK POWERLINE.

The Secretary is authorized to upgrade, maintain and replace, as necessary, the Wolf Creek underground powerline to Hurricane Ridge: *Provided*, That to the extent practicable, such maintenance and operation shall be conducted in such a manner as to remain consistent with wilderness management.

SEC. 103. PAYMENT TO CLALLAM COUNTY.

There is hereby authorized to be appropriated not to exceed \$155,000 to the Secretary of the Interior to make a payment to the Clallam County Historical Society and Museum of Port Angeles, Washington, to compensate the Society for its possessory interest in the National Park Service Visitor Center, Pioneer Memorial Museum, Olympic National Park, Washington. Upon relinquishment by the Clallam County Historical Society of all interests and use in the facility, the Secretary of the Interior shall make payment to the Clallam County Historical Society and acceptance of payment shall be considered full and just compensation for the Society's participation in the construction of the Pioneer Memorial Museum.

Appropriation
authorization.

SEC. 104. GENERAL PROVISIONS.

16 USC 256b.

(a) **MISDEMEANOR PENALTIES.**—Section 3 of the Act of March 6, 1942 (56 Stat. 136; 16 U.S.C. 256(b)) is revised by deleting all after the phrase “or situated therein,” and inserting the following: “shall be deemed guilty of a class B misdemeanor in accordance with provisions of title 18 of the United States Code.”

(b) **FORFEITURE OF PROPERTY.**—Section 4 of the Act of March 6, 1942 (56 Stat. 135; 16 U.S.C. 256c) is hereby revised to read as follows:

“SEC. 4. All guns, bows, traps, nets, seines, fishing tackle, clothing, teams, horses, machinery, logging equipment, motor vehicles, aircraft, boats, or means of transportation of every nature or description used by any person or persons or organizations within the limits of the park when engaged in or attempting to engage in killing, trapping, ensnaring, taking or capturing such wild birds, fish or animals, or taking, destroying or damaging such trees, plants, or mineral deposits contrary to the provisions of this Act or the rules and regulations promulgated by the Secretary of the Interior shall be forfeited to the United States and may be seized by the officers in the park and held pending prosecution of any person or persons or organization arrested under or charged with violating the provisions of this Act, and upon conviction under this Act of such persons or organizations using said guns, bows, traps, nets, seines, fishing tackle, clothing, teams, horses, machinery, logging equipment, motor vehicles, aircraft, boats, or other means of transportation of every nature and description used by any person or persons or organization, such forfeiture shall be adjudicated as a penalty in addition to the other punishment prescribed in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior: *Provided*, That the forfeiture of teams, horses, machinery, logging equipment, motor vehicles, aircraft, boats, or other means of transportation shall be in the discretion of the Court.”

(c) **TECHNICAL CORRECTIONS TO BOUNDARIES.**—The Act of November 7, 1986 (Public Law 99-635; 100 Stat. 3527) revising the boundaries of Olympic National Park is hereby amended as follows:

16 USC 251n.

(1) In section 1(a)(2) after “48 degrees 23 minutes north and 47 degrees” strike “38” and insert in lieu thereof “34”.

Fish and fishing.

(2) In section 1(a)(2) after “all surveyed and unsurveyed islands”, insert “, above the point of lowest low tide,”; and at the end of the paragraph, strike “north,” and insert “north: *Provided*, That such lands as are identified in this paragraph shall continue to be open to fishing and to the taking of shellfish in conformity with the laws and regulations of the State of Washington;”.

16 USC 251n
note.

(3) In section 1(b) after “numbered 149/60,030A, sheets 1 through” strike “10” and insert in lieu thereof “9”;

(4) In section 2(a) after “within section 15, township”, strike “15” and insert in lieu thereof “24”;

(5) In section 2(a) after “*Provided, however*, That the Secretary of Agriculture shall” strike “not”; and

16 USC 251n
note.

(6) Section 4 is renumbered as section 5 and a new section 4 is inserted as follows:

“SEC. 4. Effective upon acceptance thereof by the State of Washington, the jurisdiction which the United States acquired over

ose lands excluded from the boundaries of Olympic National Park
this Act is hereby retroceded to the State.”.

C. 105. KALALOCH VISITOR CENTER.

The Secretary is directed to complete a study for the location of a
ar round visitor center in the Kalaloch area of Olympic National
rk. Such study shall include the location, size and cost estimates
r the design, planning and construction of the visitor center and
upport facilities. The study shall be submitted to the Committee on
terior and Insular Affairs of the United States House of Rep-
sentatives and to the Committee on Energy and Natural Re-
sources of the United States Senate by March 1, 1989. The Secretary
authorized to construct such visitor center subject to the appro-
priation of funds.

TITLE II—NORTH CASCADES NATIONAL PARK SERVICE COMPLEX WILDERNESS

C. 201. DESIGNATION.

(a) WILDERNESS.—In furtherance of the purposes of the Wilderness
Act (16 U.S.C. 1131 et seq.; 78 Stat. 890), certain lands in the North
Cascades National Park, Ross Lake National Recreation Area, and
Lake Chelan National Recreation Area, Washington, which—

16 USC 1132
note.

(1) comprise approximately six hundred and thirty-four thou-
sand six hundred and fourteen acres of wilderness, and approxi-
mately five thousand two hundred and twenty-six acres of
potential wilderness additions, and

(2) are depicted on a map entitled “Wilderness Boundary,
North Cascades National Park Service Complex, Washington”,
numbered 168-60-186 and dated August 1988,

are hereby designated as wilderness and therefore as components of
the National Wilderness Preservation System. Such lands shall be
known as the Stephen Mather Wilderness.

C. 202. HYDROELECTRIC PROJECTS.

Section 505 of the Act of October 2, 1968 (82 Stat. 930; 16 U.S.C.
1604-4) is amended as follows: strike “in the recreation areas”, and
insert in lieu thereof “in the lands and waters within the Skagit
River Hydroelectric Project, Federal Energy and Regulatory
Commission Project 553, including the proposed Copper Creek, High
Pass, and Thunder Creek elements of the Project; and the
Newhalem Project, Federal Energy and Regulatory Commission
Project 2705, within the Ross Lake National Recreation Area; the
lands and waters within the Lake Chelan Project, Federal Energy
and Regulatory Commission Project 637; the Company Creek small
hydroelectric project at Stehekin within the Lake Chelan National
Recreation Area; and existing hydrologic monitoring stations neces-
sary for the proper operation of the hydroelectric projects listed
therein”.

C. 203. LAND ACQUISITION FOR ADMINISTRATIVE FACILITIES.

Section 301(a) of the Act of October 2, 1968 (82 Stat. 927; 16 U.S.C.
1601) is hereby amended to add a new subsection as follows:

“(b) The Secretary is hereby authorized to acquire, with the
consent of the owner, lands outside of the authorized boundaries of
North Cascades National Park Service Complex for the purpose of

construction and operation of a backcountry information center not to exceed five acres. The Secretary of the Interior is further authorized to acquire with the consent of the owner, lands for the construction of a headquarters and administrative site or sites, for the North Cascades National Park, Ross Lake National Recreation Area, and Lake Chelan National Recreation Area not to exceed ten acres. The lands so acquired shall be managed as part of the park."

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to complete the land acquisitions authorized pursuant to section 203 of this Act.

SEC. 205. RENEWABLE NATURAL RESOURCE USE IN RECREATION AREAS.

Section 402(a) of the Act of October 2, 1968 (82 Stat. 928; 16 U.S.C. 90c-1) is hereby amended to read as follows:

"The Secretary shall administer the recreation areas in a manner which in his judgment will best provide for (1) public outdoor recreation benefits and (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment. Within that portion of the Lake Chelan National Recreation Area which is not designated as wilderness, such management, utilization, and disposal of renewable natural resources and the continuation of existing uses and developments as will promote, or are compatible with, or do not significantly impair public recreation and conservation of the scenic, scientific, historic, or other values contributing to public enjoyment, are authorized. In administering the recreation areas, the Secretary may utilize such statutory authorities pertaining to the administration of the national park system, and such statutory authorities otherwise available to him for the conservation and management of natural resources as he deems appropriate for recreation and preservation purposes and for resource development compatible therewith. Within the Ross Lake National Recreation Area the removal and disposal of trees within power line rights-of-way are authorized as necessary to protect transmission lines, towers, and equipment;": *Provided*, That to the extent practicable, such removal and disposal of trees shall be conducted in such a manner as to protect scenic viewsheds."

SEC. 206. MINERAL RESOURCE USE IN RECREATION AREAS.

Section 402(b) of the Act of October 2, 1968 (82 Stat. 928; 16 U.S.C. 90c-1b) is hereby amended to read as follows:

"The lands within the recreation areas, subject to valid existing rights, are hereby withdrawn from all forms of appropriation or disposal under the public land laws, including location, entry, and patent under the United States mining laws, and disposition under the United States mineral leasing laws: *Provided, however*, That within that portion of the Lake Chelan National Recreation Area which is not designated as wilderness, sand, rock and gravel may be made available for sale to the residents of Stehekin for local use so long as such sale and disposal does not have significant adverse effects on the administration of the Lake Chelan National Recreation Area."

TITLE III—MOUNT RAINIER NATIONAL PARK WILDERNESS

SEC. 301. DESIGNATION.

16 USC 1132
note.

(a) **WILDERNESS.**—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.; 78 Stat. 890), certain lands in the Mount Rainier National Park, Washington, which—

(1) compromise approximately two hundred and sixteen thousand eight hundred and fifty-five acres of wilderness, and

(2) are depicted on a map entitled “Wilderness Boundary, Mount Rainier National Park, Washington”, numbered 105–20,014A and dated July 1988,

are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System. Such lands shall be known as the Mount Rainier Wilderness.

SEC. 302. BOUNDARY ADJUSTMENTS.

16 USC 110c.

(a) **PARK BOUNDARY ADJUSTMENTS.**—The boundaries of the Mount Rainier National Park as established in the Act of March 2, 1899 (30 Stat. 993), as amended; (16 U.S.C. 91–110b), are further revised to add to the Park approximately two hundred and forty acres, and to exclude from the park approximately thirty-one and one-half acres, as generally depicted on the map entitled “Mount Rainier National Park Proposed 1987 Boundary Adjustments”, numbered 105–80,010B and dated January 1987, which shall be on file and available for public inspection in the Washington office of the National Park Service, United States Department of the Interior and at Mount Rainier National Park.

Public
information.

(b) **FOREST BOUNDARY ADJUSTMENT.**—The boundaries of the Snoqualmie National Forest and of the Gifford Pinchot National Forest, are hereby revised to include in the Snoqualmie National Forest approximately thirty-one and one-half acres, to exclude from the Snoqualmie National Forest approximately thirty acres, and to exclude from the Gifford Pinchot National Forest approximately two hundred and ten acres, as generally depicted on a map entitled “Mount Rainier National Park Proposed 1987 Boundary Adjustments”, numbered 105–80,010B, and dated January 1987, which shall be on file and available for public inspection in the Washington, District of Columbia office of the Forest Service, United States Department of Agriculture and at the Snoqualmie and Gifford Pinchot National Forests.

Public
information.
District of
Columbia.

(c) **ADMINISTRATION OF PARK LAND.**—(1) Federal lands, and interests therein formerly within the boundary of the Snoqualmie National Forest and the Gifford Pinchot National Forest, which are included within the boundary of the Mount Rainier National Park pursuant to this Act are, subject to valid existing rights, hereby transferred to the administrative jurisdiction of the Secretary of the Interior for administration as part of the Park, and shall be subject to all the laws and regulations of the Park.

(2) The Secretary of the Interior is authorized to accept either concurrent or exclusive jurisdiction over lands and waters included within Mount Rainier National Park by this Act. The Secretary shall notify in writing the Governor of the State of Washington of the acceptance of any such jurisdiction ceded to the United States by the State. The existing exclusive Federal jurisdiction, where it exists

in the Park, shall remain in effect until such time as the Secretary and the Governor shall agree upon the terms and conditions of concurrent legislative jurisdiction for said Park pursuant to section 320(i) of the Act of October 21, 1976 (90 Stat. 2741).

Gifts and
property.

(3) **AUTHORIZATION OF LAND ACQUISITION.**—The Secretary of the Interior is authorized to acquire from willing sellers by donation, purchase with donated or appropriated funds, exchange, bequest, or otherwise all non-Federal lands, waters, and interests therein included within the boundary of the Mount Rainier National Park pursuant to this Act.

(d) **ADMINISTRATION OF FOREST LAND.**—(1) Federal lands, and interests therein formerly within the boundary of the Mount Rainier National Park, which are excluded therefrom and are included within the boundaries of the Snoqualmie National Forest pursuant to this Act are, subject to valid existing rights, hereby transferred to the administrative jurisdiction of the Secretary of Agriculture for administration as part of the Forest, and shall be subject to all the laws and regulations applicable to the National Forest System.

(2) For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 903, as amended; 16 U.S.C. 4601-9), the boundaries of the Snoqualmie National Forest and the Gifford Pinchot National Forest, as modified pursuant to this Act, shall be treated as if they were the boundaries of those national forests on January 1, 1965.

(3) Effective upon acceptance thereof by the State of Washington, the jurisdiction which the United States acquired over those lands excluded from the boundaries of the Mount Rainier National Park by this Act is hereby retroceded to the State.

SEC. 303. PARADISE POWERLINE.

The Secretary is authorized to upgrade, maintain and replace as necessary, the Paradise powerline from Longmire to Paradise: *Provided*, That to the extent practicable, such maintenance and operation shall be conducted in such a manner as to protect scenic viewsheds.

TITLE IV—GENERAL ADMINISTRATIVE PROVISIONS

(a) **ADMINISTRATION.**—(1) Subject to valid existing rights, the wilderness areas designated under titles I, II, and III of this Act shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated as wilderness, except that reference to the Secretary of Agriculture shall be deemed, where appropriate, to be a reference to the Secretary of the Interior, and any reference to the effective date of the Wilderness Act shall be deemed, where appropriate, to be a reference to the effective date of this Act.

(2) Lands designated as potential wilderness additions shall be administered by the Secretary of the Interior insofar as practicable as wilderness until such time as said lands are designated as wilderness. Any lands designated as potential wilderness additions, upon publication in the Federal Register of a notice by the Secretary of the Interior that all uses thereon that are inconsistent with the Wilderness Act have ceased or that non-Federal interests in land

Federal
Register,
publication.

have been acquired, shall thereby be designated as wilderness and managed accordingly.

(3) Congress does not intend that wilderness areas designated under this Act lead to the creation of protective perimeters or buffer zones around such wilderness areas. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(b) MAP AND DESCRIPTION.—(1) As soon as practicable after the effective date of this Act, the Secretary of the Interior shall file maps of the wilderness areas and legal descriptions of its boundaries with the Committee on Energy and Natural Resources of the United States Senate, and the Committee on Interior and Insular Affairs of the United States House of Representatives. Such maps and legal descriptions shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in the maps and legal descriptions may be made. Such maps and legal descriptions of the boundaries shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, and in the office of the appropriate Superintendent.

Public
information.

(2) Boundaries adjacent to paved and unpaved roads shall be drawn as narrowly as is practicable to allow for necessary maintenance and repairs to existing roads. Such boundaries should not, in general, exceed two hundred feet from the centerline of paved roads and one hundred feet from the centerline of unpaved roads: *Provided, however,* That larger boundaries may be drawn only as the Secretary deems necessary to exclude from the wilderness existing developments, improvements, and structures adjacent to existing roads, as well as areas needed to maintain and repair existing roads: *Provided further,* That to the extent practicable, undeveloped areas adjacent to all roads shall be managed as if designated as wilderness.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. WILD AND SCENIC RIVERS.

Section 3(a), paragraph (60), of the Wild and Scenic Rivers Act, which designates the Klickitat River in the State of Washington as a component of the National Wild and Scenic Rivers System, is amended to add the following sentence at the end of the paragraph:

16 USC 1274.

“The boundaries of the designated portions of the Klickitat River shall be as generally depicted on a map dated November, 1987, and entitled ‘Klickitat National Recreation River, River Management Area: Final Boundary’, which is on file in the office of the Chief, Forest Service, Washington, District of Columbia.”

District of
Columbia.
16 USC 1274.

SEC. 502. RESERVATION OF WATER RIGHTS.

Subject to valid existing rights, within the areas designated as wilderness by this Act, Congress hereby expressly reserves such water rights as necessary, for the purposes for which such areas are so designated. The priority date of such rights shall be the date of enactment of this Act.

Approved November 16, 1988.

LEGISLATIVE HISTORY—S. 2165 (H.R. 4146):

HOUSE REPORTS: No. 100-961 accompanying H.R. 4146 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-512 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 26, H.R. 4146 considered and passed House.

Oct. 18, considered and passed Senate, amended. S. 2165 considered and passed Senate.

Oct. 19, S. 2165 considered and passed House.

Public Law 100-669
100th Congress

An Act

To implement the Inter-American Convention on International Commercial
Arbitration.

Nov. 16, 1988

[S. 2204]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Chapter 1 of title 9, United States Code, is amended by adding at the end thereof the following new section:

“§ 15. Inapplicability of the Act of State doctrine

“Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.”

SEC. 2. Section 1605(a) of title 28, United States Code, is amended by—

- (1) striking out “or” at the end of paragraph (4);
- (2) striking out the period at the end of paragraph (5) and inserting in lieu thereof “; or”; and
- (3) adding at the end thereof the following:

“(6) in which the action is brought, either to enforce an agreement made by the foreign State with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.”

SEC. 3. Section 1610(a) of title 28, United States Code, is amended by—

- (1) striking out the period at the end of paragraph (5) and inserting in lieu thereof “; or”; and
- (2) adding at the end thereof the following:

“(6) the judgment is based on an order confirming an arbitral award rendered against the foreign State, provided that attach-

ment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement.”.

Approved November 16, 1988.

LEGISLATIVE HISTORY—S. 2204:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Sept. 30, considered and passed Senate.

Oct. 20, considered in House.

Oct. 21, considered and passed House, amended. Senate concurred in House amendment.

An Act

To amend the Federal Food, Drug, and Cosmetic Act to authorize abbreviated new animal drug applications and to amend title 35, United States Code, to authorize extension of the patents for animal drug products.

Nov. 16, 1988
[S. 2843]

As enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND REFERENCE TO ACT.

SHORT TITLE.—This Act may be cited as the “Generic Animal Drug and Patent Term Restoration Act”.

REFERENCE.—

(1) Whenever in title I (other than in section 107(b)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

(2) Whenever in title II an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 35 of the United States Code.

TITLE I—NEW ANIMAL DRUG APPLICATIONS

101. ABBREVIATED NEW ANIMAL DRUG APPLICATIONS.

GENERAL RULE.—Section 512(b) (21 U.S.C. 360b) is amended—

- (1) by inserting “(1)” after “(b)”,
- (2) by redesignating clauses (1) through (8) as clauses (A) through (H), respectively, and
- (3) by adding at the end the following:

(2) Any person may file with the Secretary an abbreviated application for the approval of a new animal drug. An abbreviated application shall contain the information required by subsection

APPLICATION REQUIREMENTS.—Section 512 is amended by striking out subsection (n) and inserting in lieu thereof the following:

(1) An abbreviated application for a new animal drug shall contain—

“(A)(i) except as provided in clause (ii), information to show that the conditions of use or similar limitations (whether in the labeling or published pursuant to subsection (i)) prescribed, recommended, or suggested in the labeling proposed for the new animal drug have been previously approved for a new animal

Generic Animal
Drug and Patent
Term
Restoration Act.
Safety.
Consumer
protection.
21 USC 301 note.

Labeling.

drug listed under paragraph (4) (hereinafter in this subsection referred to as an 'approved new animal drug'), and

"(ii) information to show that the withdrawal period at which residues of the new animal drug will be consistent with the tolerances established for the approved new animal drug is the same as the withdrawal period previously established for the approved new animal drug or, if the withdrawal period is proposed to be different, information showing that the residues of the new animal drug at the proposed different withdrawal period will be consistent with the tolerances established for the approved new animal drug;

"(B)(i) information to show that the active ingredients of the new animal drug are the same as those of the approved new animal drug, and

"(ii) if the approved new animal drug has more than one active ingredient, and if one of the active ingredients of the new animal drug is different from one of the active ingredients of the approved new animal drug and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show that the other active ingredients of the new animal drug are the same as the active ingredients of the approved new animal drug,

"(II) information to show either that the different active ingredient is an active ingredient of another approved new animal drug or of an animal drug which does not meet the requirements of section 201(w), and

"(III) such other information respecting the different active ingredients as the Secretary may require;

"(C)(i) if the approved new animal drug is permitted to be used with one or more animal drugs in animal feed, information to show that the proposed uses of the new animal drug with other animal drugs in animal feed are the same as the uses of the approved new animal drug, and

"(ii) if the approved new animal drug is permitted to be used with one or more other animal drugs in animal feed, and one of the other animal drugs proposed for use with the new animal drug in animal feed is different from one of the other animal drugs permitted to be used in animal feed with the approved new animal drug, and the application is filed pursuant to the approval of a petition filed under paragraph (3)—

"(I) information to show either that the different animal drug proposed for use with the approved new animal drug in animal feed is an approved new animal drug permitted to be used in animal feed or does not meet the requirements of section 201(w) when used with another animal drug in animal feed,

"(II) information to show that other animal drugs proposed for use with the new animal drug in animal feed are the same as the other animal drugs permitted to be used with the approved new animal drug, and

"(III) such other information respecting the different animal drug or combination with respect to which the petition was filed as the Secretary may require,

"(D) information to show that the route of administration, the dosage form, and the strength of the new animal drug are the same as those of the approved new animal drug or, if the route

of administration, the dosage form, or the strength of the new animal drug is different and the application is filed pursuant to the approval of a petition filed under paragraph (3), such information respecting the route of administration, dosage form, or strength with respect to which the petition was filed as the Secretary may require;

“(E) information to show that the new animal drug is bioequivalent to the approved new animal drug, except that if the application is filed pursuant to the approval of a petition filed under paragraph (3) for the purposes described in subparagraph (B) or (C), information to show that the active ingredients of the new animal drug are of the same pharmacological or therapeutic class as the pharmacological or therapeutic class of the approved new animal drug and that the new animal drug can be expected to have the same therapeutic effect as the approved new animal drug when used in accordance with the labeling;

“(F) information to show that the labeling proposed for the new animal drug is the same as the labeling approved for the approved new animal drug except for changes required because of differences approved under a petition filed under paragraph (3), because of a different withdrawal period, or because the new animal drug and the approved new animal drug are produced or distributed by different manufacturers;

“(G) the items specified in clauses (B) through (F) of subsection (b)(1);

“(H) a certification, in the opinion of the applicant and to the best of his knowledge, with respect to each patent which claims the approved new animal drug or which claims a use for such approved new animal drug for which the applicant is seeking approval under this subsection and for which information is required to be filed under subsection (b)(1) or (c)(3)—

“(i) that such patent information has not been filed,

“(ii) that such patent has expired,

“(iii) of the date on which such patent will expire, or

“(iv) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the new animal drug for which the application is filed; and

“(I) if with respect to the approved new animal drug information was filed under subsection (b)(1) or (c)(3) for a method of use patent which does not claim a use for which the applicant is seeking approval of an application under subsection (c)(2), a statement that the method of use patent does not claim such a use.

The Secretary may not require that an abbreviated application contain information in addition to that required by subparagraphs (A) through (H).

“(2)(A) An applicant who makes a certification described in paragraph (1)(G)(iv) shall include in the application a statement that the applicant will give the notice required by subparagraph (B) to—

“(i) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice, and

“(ii) the holder of the approved application under subsection (c)(1) for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

"(B) The notice referred to in subparagraph (A) shall state that an application, which contains data from bioequivalence studies, has been filed under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of such drug before the expiration of the patent referred to in the certification. Such notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed.

"(C) If an application is amended to include a certification described in paragraph (1)(G)(iv), the notice required by subparagraph (B) shall be given when the amended application is filed.

"(3) If a person wants to submit an abbreviated application for a new animal drug—

"(A) whose active ingredients, route of administration, dosage form, or strength differ from that of an approved new animal drug, or

"(B) whose use with other animal drugs in animal feed differs from that of an approved new animal drug,

such person shall submit a petition to the Secretary seeking permission to file such an application. The Secretary shall approve a petition for a new animal drug unless the Secretary finds that—

"(C) investigations must be conducted to show the safety and effectiveness, in animals to be treated with the drug, of the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed which differ from the approved new animal drug, or

"(D) investigations must be conducted to show the safety for human consumption of any residues in food resulting from the proposed active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed for the new animal drug which is different from the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed of the approved new animal drug.

The Secretary shall approve or disapprove a petition submitted under this paragraph within 90 days of the date the petition is submitted.

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information.

"(4)(A)(i) Within 60 days of the date of the enactment of this subsection, the Secretary shall publish and make available to the public a list in alphabetical order of the official and proprietary name of each new animal drug which has been approved for safety and effectiveness before the date of the enactment of this subsection.

"(ii) Every 30 days after the publication of the first list under clause (i) the Secretary shall revise the list to include each new animal drug which has been approved for safety and effectiveness under subsection (c) during the 30 day period.

"(iii) When patent information submitted under subsection (b)(1) or (c)(3) respecting a new animal drug included on the list is to be published by the Secretary, the Secretary shall, in revisions made under clause (ii), include such information for such drug.

"(B) A new animal drug approved for safety and effectiveness before the date of the enactment of this subsection or approved for safety and effectiveness under subsection (c) shall, for purposes of this subsection, be considered to have been published under subparagraph (A) on the date of its approval or the date of enactment, whichever is later.

C) If the approval of a new animal drug was withdrawn or suspended under subsection (c)(2)(G) or for grounds described in section (e) or if the Secretary determines that a drug has been withdrawn from sale for safety or effectiveness reasons, it may not be published in the list under subparagraph (A) or, if the withdrawal or suspension occurred after its publication in such list, it shall be immediately removed from such list—

“(i) for the same period as the withdrawal or suspension under subsection (c)(2)(G) or (e), or

“(ii) if the listed drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

Notice of the removal shall be published in the Federal Register.

5) If an application contains the information required by clauses (G), and (H) of subsection (b)(1) and such information—

“(A) is relied on by the applicant for the approval of the application, and

“(B) is not information derived either from investigations, studies, or tests conducted by or for the applicant or for which the applicant had obtained a right of reference or use from the person by or for whom the investigations, studies, or tests were conducted,

an application shall be considered to be an application filed under section (b)(2).

o) For purposes of this section, the term ‘patent’ means a patent issued by the Patent and Trademark Office of the Department of Commerce.”.

2) APPLICATION APPROVAL.—Section 512(c) is amended (1) by inserting “(1)” after “(c)”, by redesignating clauses (1) and (2) as clauses (A) and (B), and by adding at the end the following:

2)(A) Subject to subparagraph (C), the Secretary shall approve an abbreviated application for a drug unless the Secretary finds—

“(i) the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity;

“(ii) the conditions of use prescribed, recommended, or suggested in the proposed labeling are not reasonably certain to be followed in practice or, except as provided subparagraph (B), information submitted with the application is insufficient to show that each of the proposed conditions of use or similar limitations (whether in the labeling or published pursuant to subsection (i)) have been previously approved for the approved new animal drug referred to in the application;

“(iii) information submitted with the application is insufficient to show that the active ingredients are the same as those of the approved new animal drug referred to in the application;

“(iv)(I) if the application is for a drug whose active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is the same as the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed of the approved new animal drug referred to in the application, information submitted in the application is insufficient to show that the active ingredients, route of administration, dosage form, strength, or

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Register,
publication.

21 USC 360b.

use with other animal drugs in animal feed is the same as that of the approved new animal drug, or

“(II) if the application is for a drug whose active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed is different from that of the approved new animal drug referred to in the application, no petition to file an application for the drug with the different active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed was approved under subsection (n)(3);

“(v) if the application was filed pursuant to the approval of a petition under subsection (n)(3), the application did not contain the information required by the Secretary respecting the active ingredients, route of administration, dosage form, strength, or use with other animal drugs in animal feed which is not the same;

“(vi) information submitted in the application is insufficient to show that the drug is bioequivalent to the approved new animal drug referred to in the application, or if the application is filed under a petition approved pursuant to subsection (n)(3), information submitted in the application is insufficient to show that the active ingredients of the new animal drug are of the same pharmacological or therapeutic class as the pharmacological or therapeutic class of the approved new animal drug and that the new animal drug can be expected to have the same therapeutic effect as the approved new animal drug when used in accordance with the labeling;

“(vii) information submitted in the application is insufficient to show that the labeling proposed for the drug is the same as the labeling approved for the approved new animal drug referred to in the application except for changes required because of differences approved under a petition filed under subsection (n)(3), because of a different withdrawal period, or because the drug and the approved new animal drug are produced or distributed by different manufacturers;

“(viii) information submitted in the application or any other information available to the Secretary shows that (I) the inactive ingredients of the drug are unsafe for use under the conditions prescribed, recommended, or suggested in the labeling proposed for the drug, (II) the composition of the drug is unsafe under such conditions because of the type or quantity of inactive ingredients included or the manner in which the inactive ingredients are included, or (III) in the case of a drug for food producing animals, the inactive ingredients of the drug or its composition may be unsafe with respect to human food safety;

“(ix) the approval under subsection (b)(1) of the approved new animal drug referred to in the application filed under subsection (b)(2) has been withdrawn or suspended for grounds described in paragraph (1) of subsection (e), the Secretary has published a notice of a hearing to withdraw approval of the approved new animal drug for such grounds, the approval under this paragraph of the new animal drug for which the application under subsection (b)(2) was filed has been withdrawn or suspended under subparagraph (G) for such grounds, or the Secretary has determined that the approved new animal

drug has been withdrawn from sale for safety or effectiveness reasons;

“(x) the application does not meet any other requirement of subsection (n); or

“(xi) the application contains an untrue statement of material fact.

“(B) If the Secretary finds that a new animal drug for which an application is submitted under subsection (b)(2) is bioequivalent to the approved new animal drug referred to in such application and that residues of the new animal drug are consistent with the tolerances established for such approved new animal drug but at a withdrawal period which is different than the withdrawal period approved for such approved new animal drug, the Secretary may establish, on the basis of information submitted, such different withdrawal period as the withdrawal period for the new animal drug for purposes of the approval of such application for such drug.

“(C) Within 180 days of the initial receipt of an application under subsection (b)(2) or within such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall approve or disapprove the application.

“(D) The approval of an application filed under subsection (b)(2) shall be made effective on the last applicable date determined under the following:

“(i) If the applicant only made a certification described in clause (i) or (ii) of subsection (n)(1)(G) or in both such clauses, the approval may be made effective immediately.

“(ii) If the applicant made a certification described in clause (iii) of subsection (n)(1)(G), the approval may be made effective on the date certified under clause (iii).

“(iii) If the applicant made a certification described in clause (iv) of subsection (n)(1)(G), the approval shall be made effective immediately unless an action is brought for infringement of a patent which is the subject of the certification before the expiration of 45 days from the date the notice provided under subsection (n)(2)(B)(i) is received. If such an action is brought before the expiration of such days, the approval shall be made effective upon the expiration of the 30 month period beginning on the date of the receipt of the notice provided under subsection (n)(2)(B) or such shorter or longer period as the court may order because either party to the action failed to reasonably cooperate in expediting the action, except that if before the expiration of such period—

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“(I) the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of the court decision,

“(II) the court decides that such patent has been infringed, the approval shall be made effective on such date as the court orders under section 271(e)(4)(A) of title 35, United States Code, or

“(III) the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of such court decision.

In such an action, each of the parties shall reasonably cooperate in expediting the action. Until the expiration of 45 days from

the date the notice made under subsection (n)(2)(B) is received, no action may be brought under section 2201 of title 28, United States Code, for a declaratory judgment with respect to the patent. Any action brought under section 2201 shall be brought in the judicial district where the defendant has its principal place of business or a regular and established place of business.

“(iv) If the application contains a certification described in clause (iv) of subsection (n)(1)(G) and is for a drug for which a previous application has been filed under this subsection containing such a certification, the application shall be made effective not earlier than 180 days after—

“(I) the date the Secretary receives notice from the applicant under the previous application of the first commercial marketing of the drug under the previous application, or

“(II) the date of a decision of a court in an action described in subclause (III) holding the patent which is the subject of the certification to be invalid or not infringed, whichever is earlier.

“(E) If the Secretary decides to disapprove an application, the Secretary shall give the applicant notice of an opportunity for a hearing before the Secretary on the question of whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within 30 days after such notice, such hearing shall commence not more than 90 days after the expiration of such 30 days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within 90 days after the date fixed by the Secretary for filing final briefs.

“(F)(i) If an application submitted under subsection (b)(1) for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b)(1), is approved after the date of the enactment of this paragraph, no application may be submitted under subsection (b)(2) which refers to the drug for which the subsection (b)(1) application was submitted before the expiration of 5 years from the date of the approval of the application under subsection (b)(1), except that such an application may be submitted under subsection (b)(2) after the expiration of 4 years from the date of the approval of the subsection (b)(1) application if it contains a certification of patent invalidity or noninfringement described in clause (iv) of subsection (n)(1)(G). The approval of such an application shall be made effective in accordance with subparagraph (B) except that, if an action for patent infringement is commenced during the one-year period beginning 48 months after the date of the approval of the subsection (b) application, the 30 month period referred to in subparagraph (C)(iii) shall be extended by such amount of time (if any) which is required for seven and one-half years to have elapsed from the date of approval of the subsection (b) application.

“(ii) If an application submitted under subsection (b)(1) for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application approved under such subsection, is approved after the date of enactment of this paragraph and if such application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human

food safety studies (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application submitted under subsection (b)(2) for the conditions of approval of such drug in the subsection (b)(1) application effective before the expiration of 3 years from the date of the approval of the application under subsection (b)(1) for such drug.

“(iii) If a supplement to an application approved under subsection (b)(1) is approved after the date of enactment of this paragraph and the supplement contains reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) essential to the approval of the supplement and conducted or sponsored by the person submitting the supplement, the Secretary may not make the approval of an application submitted under subsection (b)(2) for a change approved in the supplement effective before the expiration of 3 years from the date of the approval of the supplement.

“(iv) An applicant under subsection (b)(1) who comes within the provisions of clause (i) of this subparagraph as a result of an application which seeks approval for a use solely in non-food producing animals, may elect, within 10 days of receiving such approval, to waive clause (i) of this subparagraph, in which event the limitation on approval of applications submitted under subsection (b)(2) set forth in clause (ii) of this subparagraph shall be applicable to the subsection (b)(1) application.

“(v) If an application (including any supplement to a new animal drug application) submitted under subsection (b)(1) for a new animal drug for a food-producing animal use, which includes an active ingredient (including any ester or salt of the active ingredient) which has been the subject of a waiver under subparagraph (B)(iv) is approved after the date of enactment of this paragraph, and if the application contains reports of clinical or field investigations or human food safety studies (other than bioequivalence or residue studies) essential to the new approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application (including any supplement to such application) submitted under subsection (b)(2) for the new conditions of approval of such drug in the subsection (b)(1) application effective before the expiration of five years from the date of approval of the application under subsection (b)(1) for such drug. The provisions of this paragraph shall apply only to the first approval for a food-producing animal use for the same applicant after the waiver under subparagraph (B)(iv).

“(G) If an approved application submitted under subsection (b)(2) for a new animal drug refers to a drug the approval of which was withdrawn or suspended for grounds described in paragraph (1) or (2) of subsection (e) or was withdrawn or suspended under this subparagraph or which, as determined by the Secretary, has been withdrawn from sale for safety or effectiveness reasons, the approval of the drug under this paragraph shall be withdrawn or suspended—

“(i) for the same period as the withdrawal or suspension under subsection (e) or this subparagraph, or

“(ii) if the approved new animal drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier,

the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

“(H) For purposes of this paragraph:

“(i) The term ‘bioequivalence’ means the rate and extent to which the active ingredient or therapeutic ingredient is absorbed from a new animal drug and becomes available at the site of drug action.

“(ii) A new animal drug shall be considered to be bioequivalent to the approved new animal drug referred to in its application under subsection (n) if—

“(I) the rate and extent of absorption of the drug do not show a significant difference from the rate and extent of absorption of the approved new animal drug referred to in the application when administered at the same dose of the active ingredient under similar experimental conditions in either a single dose or multiple doses;

“(II) the extent of absorption of the drug does not show a significant difference from the extent of absorption of the approved new animal drug referred to in the application when administered at the same dose of the active ingredient under similar experimental conditions in either a single dose or multiple doses and the difference from the approved new animal drug in the rate of absorption of the drug is intentional, is reflected in its proposed labeling, is not essential to the attainment of effective drug concentrations in use, and is considered scientifically insignificant for the drug in attaining the intended purposes of its use and preserving human food safety; or

“(III) in any case in which the Secretary determines that the measurement of the rate and extent of absorption or excretion of the new animal drug in biological fluids is inappropriate or impractical, an appropriate acute pharmacological effects test or other test of the new animal drug and, when deemed scientifically necessary, of the approved new animal drug referred to in the application in the species to be tested or in an appropriate animal model does not show a significant difference between the new animal drug and such approved new animal drug when administered at the same dose under similar experimental conditions.

If the approved new animal drug referred to in the application for a new animal drug under subsection (n) is approved for use in more than one animal species, the bioequivalency information described in subclause (I), (II), and (III) shall be obtained for one species, or if the Secretary deems appropriate based on scientific principles, shall be obtained for more than one species. The Secretary may prescribe the dose to be used in determining bioequivalency under subclause (I), (II), or (III). To assure that the residues of the new animal drug will be consistent with the established tolerances for the approved new animal drug referred to in the application under subsection (b)(2) upon the expiration of the withdrawal period contained in the application for the new animal drug, the Secretary shall require bioequivalency data or residue depletion studies of the new animal drug or such other data or studies as the Secretary considers appropriate based on scientific principles. If the Secretary requires one or more residue studies under the preceding

sentence, the Secretary may not require that the assay methodology used to determine the withdrawal period of the new animal drug be more rigorous than the methodology used to determine the withdrawal period for the approved new animal drug referred to in the application. If such studies are required and if the approved new animal drug, referred to in the application for the new animal drug for which such studies are required, is approved for use in more than one animal species, such studies shall be conducted for one species, or if the Secretary deems appropriate based on scientific principles, shall be conducted for more than one species.”.

C. 102. PATENT INFORMATION.

a) SECTION 512(b).—Section 512(b)(1) of such Act is amended by adding at the end the following: “The applicant shall file with the application the patent number and the expiration date of any patent which claims the new animal drug for which the applicant filed the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If an application is filed under this subsection for a drug and a patent which claims such drug or a method of using such drug is issued after the filing date but before approval of the application, the applicant shall amend the application to include the information required by the preceding sentence. Upon approval of the application, the Secretary shall publish information submitted under the two preceding sentences.”.

21 USC 360b.

b) OTHER SECTIONS.—

(1) Section 512(c) is amended by adding at the end the following:

21 USC 360b.

(3) If the patent information described in subsection (b)(1) could be filed with the submission of an application under subsection (b)(1) because the application was filed before the patent information was required under subsection (b)(1) or a patent was issued after the application was approved under such subsection, the holder of an approved application shall file with the Secretary the patent number and the expiration date of any patent which claims the new animal drug for which the application was filed or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of such drug. If the holder of an approved application could not file patent information under subsection (b)(1) because it was not required at the time the application was approved, the holder shall file such information under this subsection not later than 30 days after the date of the enactment of this sentence, and if the holder of an approved application could not file patent information under subsection (b)(1) because no patent had been issued when an application was filed or approved, the holder shall file such information under this subsection not later than 30 days after the date the patent is issued. Upon the submission of patent information under this subsection, the Secretary shall publish it.”.

Public
information.

(2) The first sentence of section 512(d)(1) is amended by redesignating subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively and by inserting after subparagraph (F) the following:

21 USC 360b.

“(G) the application failed to contain the patent information prescribed by subsection (b)(1);”.

21 USC 360b.

(3) The second sentence of section 512(d)(1) is amended by striking out “(H)” and inserting in lieu thereof “(G)”.

21 USC 360b.

(4) The first sentence of section 512(e)(1) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following:

“(D) the patent information prescribed by subsection (c)(3) was not filed within 30 days after the receipt of written notice from the Secretary specifying the failure to file such information;”.

21 USC 360b
note.

SEC. 103. REGULATIONS.

(a) **GENERAL RULE.**—The Secretary of Health and Human Services shall promulgate, in accordance with the notice and comment requirements of section 553 of title 5, United States Code, such regulations as may be necessary for the administration of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended by sections 101 through 103 of this title, within one year of the date of enactment of this Act.

(b) **TRANSITION.**—During the period beginning 60 days after the date of enactment of this Act and ending on the date regulations promulgated under subsection (a) take effect, abbreviated new animal drug applications may be submitted in accordance with the provisions of section 314.55 and part 320 of title 21 of the Code of Federal Regulations and shall be considered as suitable for any drug which has been approved for safety and effectiveness under section 512(c) of the Federal Food, Drug, and Cosmetic Act before the date of enactment of this Act. If any such provision of section 314.55 or part 320 is inconsistent with the requirements of section 512 of the Federal Food, Drug, and Cosmetic Act (as amended by this title), the Secretary shall consider the application under the applicable requirements of section 512 (as so amended).

SEC. 104. SAFETY AND EFFECTIVENESS DATA.

Section 512 (as amended by section 101(b) of this title) is amended by adding at the end the following:

Public
information.

“(p)(1) Safety and effectiveness data and information which has been submitted in an application filed under subsection (b)(1) for a drug and which has not previously been disclosed to the public shall be made available to the public, upon request, unless extraordinary circumstances are shown—

“(A) if no work is being or will be undertaken to have the application approved,

“(B) if the Secretary has determined that the application is not approvable and all legal appeals have been exhausted,

“(C) if approval of the application under subsection (c) is withdrawn and all legal appeals have been exhausted,

“(D) if the Secretary has determined that such drug is not a new drug, or

“(E) upon the effective date of the approval of the first application filed under subsection (b)(2) which refers to such drug or upon the date upon which the approval of an application filed under subsection (b)(2) which refers to such drug could be made effective if such an application had been filed.

“(2) Any request for data and information pursuant to paragraph (1) shall include a verified statement by the person making the

request that any data or information received under such paragraph shall not be disclosed by such person to any other person—

“(A) for the purpose of, or as part of a plan, scheme, or device for, obtaining the right to make, use, or market, or making, using, or marketing, outside the United States, the drug identified in the application filed under subsection (b)(1), and

“(B) without obtaining from any person to whom the data and information are disclosed an identical verified statement, a copy of which is to be provided by such person to the Secretary, which meets the requirements of this paragraph.”.

SEC. 105. VETERINARY PRESCRIPTION DRUGS.

Section 503 (21 U.S.C. 353) is amended by adding at the end thereof the following new subsection:

“(c)(1)(A) A drug intended for use by animals other than man which—

“(i) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary for its use, is not safe for animal use except under the professional supervision of a licensed veterinarian, or

“(ii) is limited by an approved application under subsection (b) of section 512 to use under the professional supervision of a licensed veterinarian,

shall be dispensed only by or upon the lawful written or oral order of a licensed veterinarian in the course of the veterinarian's professional practice.

“(B) For purposes of subparagraph (A), an order is lawful if the order—

“(i) is a prescription or other order authorized by law,

“(ii) is, if an oral order, promptly reduced to writing by the person lawfully filling the order, and filed by that person, and

“(iii) is refilled only if authorized in the original order or in a subsequent oral order promptly reduced to writing by the person lawfully filling the order, and filed by that person.

“(C) The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

Fraud.

“(2) Any drug when dispensed in accordance with paragraph (1) of this subsection—

“(A) shall be exempt from the requirements of section 502, except subsections (a), (g), (h), (i)(2), (i)(3), and (p) of such section, and

“(B) shall be exempt from the packaging requirements of subsections (g), (h), and (p) of such section, if—

“(i) when dispensed by a licensed veterinarian, the drug bears a label containing the name and address of the practitioner and any directions for use and cautionary statements specified by the practitioner, or

“(ii) when dispensed by filling the lawful order of a licensed veterinarian, the drug bears a label containing the name and address of the dispenser, the serial number and date of the order or of its filling, the name of the licensed veterinarian, and the directions for use and cautionary statements, if any, contained in such order.

The preceding sentence shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.

“(3) The Secretary may by regulation exempt drugs for animals other than man subject to section 512 from the requirements of paragraph (1) when such requirements are not necessary for the protection of the public health.

Fraud.

“(4) A drug which is subject to paragraph (1) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement ‘Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.’ A drug to which paragraph (1) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the statement specified in the preceding sentence.”

21 USC 360b
note.

SEC. 106. DRUGS PRIMARILY MANUFACTURED USING BIOTECHNOLOGY.

Notwithstanding section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act, the Secretary of Health and Human Services may not approve an abbreviated application submitted under such section for a new animal drug which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques.

SEC. 107. CONFORMING AMENDMENTS.

(a) BATCH CERTIFICATION.—

(1) Section 201(w) (21 U.S.C. 321(w)) is amended by striking out “; or” at the end of paragraph (2) and inserting in lieu thereof a period and by striking out paragraph (3).

(2) Section 512(a)(1) (21 U.S.C. 360b(a)(1)) is amended by inserting “and” at the end of subparagraph (A), by striking out “, and” at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C).

(b) TITLE 28.—Section 2201(b) of title 28, United States Code, is amended by inserting “or 512” after “505”.

21 USC 360b
note.

SEC. 108. EFFECTIVE DATE.

The Secretary of Health and Human Services may not make an approval of an application submitted under section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)(2)) effective before January 1, 1991.

TITLE II—PATENT TERMS

SEC. 201. EXTENSION OF PATENT TERM.

35 USC 156.

(a) SECTION 156(a)(5).—Section 156(a)(5) is amended—

(1) by inserting “or (C)” after “subparagraph (B)” in subparagraph (A),

(2) by striking out “or” at the end of subparagraph (A), and

(3) by striking out the period at the end of subparagraph (B) and inserting “; or” and the following:

Marketing.

“(C) for purposes of subparagraph (A), in the case of a patent which—

“(i) claims a new animal drug or a veterinary biological product which (I) is not covered by the claims in any other patent which has been extended, and (II) has received permission for the commercial marketing or use in non-food-producing animals and in food-producing animals, and

“(ii) was not extended on the basis of the regulatory review period for use in non-food-producing animals,

the permission for the commercial marketing or use of the drug or product after the regulatory review period for use in food-producing animals is the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal.”

(b) SECTION 156(b).—Section 156(b) is amended to read as follows:

35 USC 156.

“(b) The rights derived from any patent the term of which is extended under this section shall during the period during which the term of the patent is extended—

“(1) in the case of a patent which claims a product, be limited to any use approved for the product—

“(A) before the expiration of the term of the patent—

“(i) under the provision of law under which the applicable regulatory review occurred, or

“(ii) under the provision of law under which any regulatory review described in paragraph (1), (4), or (5) of subsection (g) occurred, and

“(B) on or after the expiration of the regulatory review period upon which the extension of the patent was based;

“(2) in the case of a patent which claims a method of using a product, be limited to any use claimed by the patent and approved for the product—

“(A) before the expiration of the term of the patent—

“(i) under any provision of law under which an applicable regulatory review occurred, and

“(ii) under the provision of law under which any regulatory review described in paragraph (1), (4), or (5) of subsection (g) occurred, and

“(B) on or after the expiration of the regulatory review period upon which the extension of the patent was based; and

“(3) in the case of a patent which claims a method of manufacturing a product, be limited to the method of manufacturing as used to make—

“(A) the approved product, or

“(B) the product if it has been subject to a regulatory review period described in paragraphs (1), (4), or (5) of subsection (g).

As used in this subsection, the term ‘product’ includes an approved product.”

(c) SECTION 156(c)(2).—Section 156(c)(2) is amended by striking out “and (3)(B)(i)” and inserting in lieu thereof “(3)(B)(i), (4)(B)(i), and (5)(B)(i)”.

(d) SECTION 156(d)(1)(C).—Section 156(d)(1)(C) is amended by inserting “or the Secretary of Agriculture” after “Services”.

(e) SECTION 156(d)(2)(A).—Section 156(d)(2)(A) is amended to read as follows:

“(2)(A) Within 60 days of the submittal of an application for extension of the term of a patent under paragraph (1), the Commissioner shall notify—

“(i) the Secretary of Agriculture if the patent claims a drug product or a method of using or manufacturing a drug product and the drug product is subject to the Virus-Serum-Toxin Act, and

“(ii) the Secretary of Health and Human Services if the patent claims any other drug product, a medical device, or a food additive or color additive or a method of using or manufac-

turing such a product, device, or additive and if the product, device, and additive are subject to the Federal Food, Drug, and Cosmetic Act,

Federal
Register,
publication.

of the extension application and shall submit to the Secretary who is so notified a copy of the application. Not later than 30 days after the receipt of an application from the Commissioner, the Secretary receiving the application shall review the dates contained in the application pursuant to paragraph (1)(C) and determine the applicable regulatory review period, shall notify the Commissioner of the determination, and shall publish in the Federal Register a notice of such determination."

35 USC 156.

(f) SECTION 156(d)(2)(B).—Section 156(d)(2)(B) is amended to read as follows:

"(B)(i) If a petition is submitted to the Secretary making the determination under subparagraph (A), not later than 180 days after the publication of the determination under subparagraph (A), upon which it may reasonably be determined that the applicant did not act with due diligence during the applicable regulatory review period, the Secretary making the determination shall, in accordance with regulations promulgated by such Secretary, determine if the applicant acted with due diligence during the applicable regulatory review period. The Secretary making the determination shall make such determination not later than 90 days after the receipt of such a petition. For a drug product, device, or additive subject to the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act, the Secretary may not delegate the authority to make the determination prescribed by this clause to an office below the Office of the Commissioner of Food and Drugs. For a product subject to the Virus-Serum-Toxin Act, the Secretary of Agriculture may not delegate the authority to make the determination prescribed by this clause to an office below the office of the Assistant Secretary for Marketing and Inspection Services.

Federal
Register,
publication.

"(ii) The Secretary making a determination under clause (i) shall notify the Commissioner of the determination and shall publish in the Federal Register a notice of such determination together with the factual and legal basis for such determination. Any interested person may request, within the 60-day period beginning on the publication of a determination, the Secretary making the determination to hold an informal hearing on the determination. If such a request is made within such period, such Secretary shall hold such hearing not later than 30 days after the date of the request, or at the request of the person making the request, not later than 60 days after such date. The Secretary who is holding the hearing shall provide notice of the hearing to the owner of the patent involved and to any interested person and provide the owner and any interested person an opportunity to participate in the hearing. Within 30 days after the completion of the hearing, such Secretary shall affirm or revise the determination which was the subject of the hearing and shall notify the Commissioner of any revision of the determination and shall publish any such revision in the Federal Register."

Federal
Register,
publication.

(g) SECTION 156(f).—Section 156(f) is amended—

(1) by striking out "human" in paragraph (1)(A) and by amending paragraph (2) to read as follows:

"(2) The term 'drug product' means the active ingredient of—

“(A) a new drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act), or
“(B) a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Virus-Serum-Toxin Act) which is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques, including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.”,

(2) by amending subparagraphs (B) and (C) of paragraph (4) to read as follows:

“(B) Any reference to section 503, 505, 507, 512, or 515 is a reference to section 503, 505, 507, 512, or 515 of the Federal Food, Drug, and Cosmetic Act.

“(C) Any reference to the Virus-Serum-Toxin Act is a reference to the Act of March 4, 1913 (21 U.S.C. 151-158).”, and
(3) by adding at the end the following:

“(7) The term ‘date of enactment’ as used in this section means September 24, 1984, for a human drug product, a medical device, food additive, or color additive.

“(8) The term ‘date of enactment’ as used in this section means the date of enactment of the Generic Animal Drug and Patent Term Restoration Act for an animal drug or a veterinary biological product.”.

SECTION 156(g).—

(1) Paragraph (1) of section 156(g) is amended—

35 USC 156.

(A) in subparagraph (A), by striking out “human drug product” and inserting in lieu thereof “new drug, antibiotic drug, or human biological product”,

(B) in subparagraph (B)—

(i) by striking out “human drug product” in the matter before clause (i) and inserting in lieu thereof “new drug, antibiotic drug, or human biological product”, and

(ii) by striking out “human drug product” in clauses (i) and (ii) and inserting in lieu thereof “product”.

(2) Paragraph (1)(A) of section 156(g) is amended by striking out “paragraph (4)” and inserting in lieu thereof “paragraph

(3) Paragraphs (2)(A) and (3)(A) are each amended by striking out “paragraph (4)” and inserting in lieu thereof “paragraph

(4) Section 156(g) is amended by redesignating paragraph (6) as paragraph (6) and by inserting after paragraph (3) the following:

“(4)(A) In the case of a product which is a new animal drug, the term means the period described in subparagraph (B) to which the limitation described in paragraph (6) applies.

“(B) The regulatory review period for a new animal drug product is the sum of—

“(i) the period beginning on the earlier of the date a major health or environmental effects test on the drug was initiated or the date an exemption under subsection (j) of section 512 became effective for the approved new animal drug product and ending on the date an application was

initially submitted for such animal drug product under section 512, and

“(ii) the period beginning on the date the application was initially submitted for the approved animal drug product under subsection (b) of section 512 and ending on the date such application was approved under such section.

“(5)(A) In the case of a product which is a veterinary biological product, the term means the period described in subparagraph (B) to which the limitation described in paragraph (6) applies.

“(B) The regulatory period for a veterinary biological product is the sum of—

“(i) the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act, and

“(ii) the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.”.

35 USC 156.

(5) Paragraph (6) (as so redesignated) of section 156(g) is amended—

(A) by striking out “paragraph (1)(B) was submitted” in subparagraph (B)(i) and inserting in lieu thereof “paragraph (1)(B) or (4)(B) was submitted and no request for the authority described in paragraph (5)(B) was submitted”,

(B) by striking out “paragraph (2)” in subparagraph (B)(ii) and inserting in lieu thereof “paragraph (2)(B) or (4)(B)”, and

(C) in subparagraph (C), by inserting before the period the following: “or in the case of an approved product which is a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act or the Virus-Serum-Toxin Act), three years”.

(i) SECTION 271(e).—

(1) Section 271(e)(1) is amended—

(A) by inserting before the last close parenthesis the following: “which is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques”, and

(B) by inserting before the period the following: “or veterinary biological products”.

(2) Section 271(e)(2) is amended to read as follows:

“(2) It shall be an act of infringement to submit—

“(A) an application under section 505(j) of the Federal Food, Drug, and Cosmetic Act or described in section 505(b)(2) of such Act for a drug claimed in a patent or the use of which is claimed in a patent, or

“(B) an application under section 512 of such Act or under the Act of March 4, 1913 (21 U.S.C. 151-158) for a drug or veterinary biological product which is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes involving site specific genetic manipulation techniques and which is claimed in a patent or the use of which is claimed in a patent,

the purpose of such submission is to obtain approval under such act to engage in the commercial manufacture, use, or sale of a drug or veterinary biological product claimed in a patent or the use of which is claimed in a patent before the expiration of such patent.”.

(3) Section 271(e)(4) is amended by inserting “or veterinary biological product” after “drug” each place it occurs. 35 USC 271.

Approved November 16, 1988.

LEGISLATIVE HISTORY—S. 2843 (H.R. 4982):

HOUSE REPORTS: No. 100-972, Pt. 1 (Comm. on Energy and Commerce) and Pt. 2 (Comm. on the Judiciary), both accompanying H.R. 4982.

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 6, H.R. 4982 considered and passed House.

Oct. 13, S. 2843 considered and passed Senate and House.

Public Law 100-671
100th Congress

Joint Resolution

Nov. 16, 1988

[S.J. Res. 303]

To designate the month of October 1988 as "National Lupus Awareness Month".

Whereas Lupus Erythematosus is a disease which affects over five hundred thousand Americans, mostly women in their child-bearing years;

Whereas Lupus is an immune system disorder of unknown cause which affects the joints, skin, and almost any vital organ;

Whereas although Lupus can be controlled reasonably well in most people, it can be fatal in some instances; and

Whereas the commitment to research and educational efforts to develop a greater understanding about Lupus should be continued: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of October 1988 is designated as "National Lupus Awareness Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate programs, ceremonies, and activities.

Approved November 16, 1988.

LEGISLATIVE HISTORY—S.J. Res. 303:

CONGRESSIONAL RECORD, Vol. 134 (1988):

July 26, considered and passed Senate.

Oct. 21, considered and passed House.

Public Law 100-672
100th Congress

Joint Resolution

Designating the third week in May 1989 as "National Tourism Week".

Nov. 16, 1988

[S.J. Res. 325]

Whereas travel and tourism is the third largest retail industry and the second largest private employer in the United States, generating more than five million five hundred thousand jobs and indirectly employing another two million two hundred thousand Americans;

Whereas total travel expenditures in the United States amount to nearly \$270,000,000,000 annually, or about 6.4 per centum of the gross national product;

Whereas tourism is an essential American export, as more than twenty-eight million foreign travelers spent approximately \$19,000,000,000 in the United States in 1987;

Whereas development and promotion of tourism have brought new industries, jobs, and economic revitalization to cities and regions across the United States;

Whereas tourism contributes substantially to personal growth, education, appreciation of intercultural differences, and the enhancement of international understanding and good will; and

Whereas the abundant natural and manmade attractions of the United States and the hospitality of the American people establish the United States as the preeminent destination for both foreign and domestic travelers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning on the second Sunday in May 1989 is designated as "National Tourism Week". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe that week with appropriate ceremonies and activities.

Approved November 16, 1988.

LEGISLATIVE HISTORY—S.J. Res. 325:

CONGRESSIONAL RECORD, Vol. 134 (1988):
July 26, considered and passed Senate.
Oct. 21, considered and passed House.

Public Law 100-673
100th Congress

An Act

Nov. 17, 1988

[H.R. 5280]

To require the Secretary of the Treasury to mint coins in commemoration of the Bicentennial of the United States Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Bicentennial of
the United
States Congress
Commemorative
Coin Act.
31 USC 5112
note.
31 USC 5112
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bicentennial of the United States Congress Commemorative Coin Act".

SEC. 2. SPECIFICATIONS OF COINS.

(a) FIVE DOLLAR GOLD COINS.—

(1) ISSUANCE.—The Secretary of the Treasury (hereinafter in this Act referred to as the "Secretary") shall mint and issue not more than 1,000,000 five dollar coins each of which shall—

(A) weigh 8.359 grams;

(B) have a diameter of .850 inches; and

(C) be composed of 90 percent gold and 10 percent alloy.

(2) DESIGN.—The design of the five dollar coins shall, in accordance with section 4, be emblematic of the Bicentennial of the United States Congress. Each five dollar coin shall bear a designation of the value of the coin, an inscription of the year "1989", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(b) ONE DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary shall mint and issue not more than 3,000,000 one dollar coins each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) be composed of 90 percent silver and 10 percent copper.

(2) DESIGN.—The design of the one dollar coins shall, in accordance with section 4, be emblematic of the Bicentennial of the United States Congress. Each one dollar coin shall bear a designation of the value of the coin, an inscription of the year "1989", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(c) HALF DOLLAR CLAD COINS.—

(1) ISSUANCE.—The Secretary shall issue not more than 4,000,000 half dollar coins each of which shall—

(A) weigh 11.34 grams;

(B) have a diameter of 1.205 inches; and

(C) be minted to the specifications for half dollar coins contained in section 5112(b) of title 31, United States Code.

(2) DESIGN.—The design of the half dollar coins shall, in accordance with section 4, be emblematic of the Bicentennial of the United States Congress. On each half dollar coin shall be a designation of the value of the coin, an inscription of the year

“1989”, and inscriptions of the words “Liberty”, “In God We Trust”, “United States of America”, and “E Pluribus Unum”.

(d) **LEGAL TENDER.**—The coins minted under this Act shall be legal tender as provided in section 5103 of title 31, United States Code.

(e) **NUMISMATIC ITEMS.**—For purposes of section 5132(a)(1) of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 3. SOURCES OF BULLION.

31 USC 5112
note.

(a) **GOLD.**—The Secretary shall obtain gold for minting coins under this Act pursuant to the authority of the Secretary under existing law.

(b) **SILVER.**—The Secretary shall obtain silver for minting coins under this Act only from stockpiles established under the Strategic and Critical Minerals Stock Piling Act (50 U.S.C. 98 et seq.).

SEC. 4. DESIGN OF COINS.

31 USC 5112
note.

The design for each coin authorized by this Act shall be selected by the Secretary after consultation with the Speaker of the House of Representatives, the President pro tempore of the Senate, and the Commission of Fine Arts.

SEC. 5. ISSUANCE OF COINS.

31 USC 5112
note.

(a) **FIVE DOLLAR COINS.**—The five dollar coins minted under this Act may be issued in uncirculated and proof qualities and shall be struck at the United States Mint at West Point, New York.

(b) **ONE DOLLAR AND HALF DOLLAR COINS.**—The one dollar and half dollar coins minted under this Act may be issued in uncirculated and proof qualities, except that not more than one facility of the United States Mint may be used to strike any particular combination of denomination and quality.

(c) **COMMENCEMENT OF ISSUANCE.**—The Secretary may issue the coins minted under this Act beginning January 1, 1989.

(d) **TERMINATION OF AUTHORITY.**—Coins may not be minted under this Act after June 30, 1990.

(e) **CONTRACTS.**—Any contract to be made by the Secretary involving the promotion, advertising, or marketing of any coins authorized under this Act shall be valid only upon approval by the United States Capitol Preservation Commission.

SEC. 6. SALE OF COINS.

31 USC 5112
note.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, the Secretary shall sell the coins minted under this Act at a price equal to the face value, plus the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, and overhead expenses).

(b) **BULK SALES.**—The Secretary shall make any bulk sales of the coins minted under this Act at a reasonable discount to reflect the lower costs of such sales.

(c) **PREPAID ORDERS.**—The Secretary shall accept prepaid orders for the coins minted under this Act prior to the issuance of such coins. Sale prices with respect to such prepaid orders shall be at a reasonable discount.

(d) **SURCHARGES.**—All sales of coins minted under this Act shall include a surcharge of \$35 per coin for the five dollar coins, \$7 per coin for the one dollar coins, and \$1 per coin for the half dollar coins.

31 USC 5112
note.

SEC. 7. FINANCIAL ASSURANCES.

(a) **NO NET COST TO THE GOVERNMENT.**—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) **PAYMENT FOR COINS.**—A coin shall not be issued under this Act unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

31 USC 5112
note.

SEC. 8. USE OF SURCHARGES.

(a) **USE OF SURCHARGES.**—Fifty percent of the first \$40,000,000 in surcharges that are received by the Secretary from the sale of coins minted under this Act shall be deposited in the Capitol Preservation Fund and be available to the United States Capitol Preservation Commission. The balance of the surcharges received by the Secretary shall be deposited in the general fund of the Treasury for the sole purpose of reducing the national debt.

(b) **RESTRICTIONS ON USE OF SURCHARGES.**—

(1) **PROHIBITION ON REPRESENTATIONAL EXPENSES.**—No amount received by the Commission from the Capitol Preservation Fund may be used to pay representational expenses of the Commission.

(2) **LIMITATIONS ON REIMBURSEMENTS.**—A member of an advisory board established by the Commission shall be entitled to receive per diem, travel and transportation expenses in the same manner as an employee serving intermittently in the Government service may receive under section 5703 of title 5, United States Code.

(c) **REPORT REQUIRED.**—The Commission shall submit a report of expenditures to the Clerk of the House of Representatives not later than February 28 for the last six months of the preceding year and not later than August 31 for the first six months of the current year. The Clerk shall promptly transmit the reports to the Public Printer for printing in the Congressional Record.

31 USC 5112
note.

SEC. 9. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) **IN GENERAL.**—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods and services necessary for carrying out the provisions of this Act.

(b) **EQUAL EMPLOYMENT OPPORTUNITY.**—Subsection (a) shall not relieve any person entering into a contract under the authority of

this Act from complying with any law relating to equal employment opportunity.

Approved November 17, 1988.

LEGISLATIVE HISTORY—H.R. 5280:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 3, 4, considered and passed House.

Oct. 7, considered and passed Senate, amended.

Oct. 20, House concurred in Senate amendment with an amendment. Senate concurred in House amendment.



Public Law 100-674
100th Congress

An Act

Nov. 17, 1988

[H.R. 5315]

Congressional
Award Act
Amendments of
1988.

2 USC 801 note.

To amend the Congressional Award Act to extend the Congressional Award Program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Congressional Award Act Amendments of 1988".

SEC. 2. AMENDMENTS TO THE CONGRESSIONAL AWARD ACT.

(a) ANNUAL REPORTS.—Section 3(e) of the Congressional Award Act (2 U.S.C. 802(e)) is amended—

(1) by redesignating paragraph (6) as paragraph (8); and

(2) by inserting after paragraph (5) the following new paragraphs:

"(6) A detailed description of the goals and objectives of the Board and the role of Congressional participation in fulfilling those goals and objectives.

"(7) Plans for activities to be conducted during the remainder of the duration of the program, consistent with the functions and requirements established under this Act."

(b) MEMBERSHIP OF THE BOARD.—Section 4 of the Congressional Award Act (2 U.S.C. 803) is amended—

(1) in subsection (a)(1)—

(A) by striking "thirty-three" and inserting "25";

(B) by striking "Eight" each place it appears and inserting "Six";

(C) by inserting ", 1 of whom shall be a member of the Congressional Award Association" before the period in each of subparagraphs (A) and (D); and

(D) by inserting ", 1 of whom shall be a representative of a local Congressional Award Council" before the period in each of subparagraphs (B) and (C); and

(2) by amending subsection (d) to read as follows:

"(d)(1) A meeting of the Board may be convened only if—

"(A) notice of the meeting was provided to each member in accordance with the bylaws; and

"(B) not less than 11 members are present for the meeting at the time given in the notice.

"(2) A majority of the members present when a meeting is convened shall constitute a quorum for the remainder of the meeting."

(c) POWERS, FUNCTIONS, AND LIMITATIONS.—(1) The heading of section 7 of the Congressional Award Act (2 U.S.C. 806) is amended to read as follows:

"POWERS, FUNCTIONS, AND LIMITATIONS".

(2) Section 7 of the Congressional Award Act (2 U.S.C. 806) is amended—

(A) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively; and

(B) by inserting after subsection (a) the following new subsection:

(b)(1) The Board shall establish such functions and procedures as may be necessary to carry out the provisions of this Act.

(2) The functions established by the Board under paragraph (1) shall include—

“(A) communication with local Congressional Award Councils concerning the Congressional Award Program;

“(B) provision, upon the request of any local Congressional Award Council, of such technical assistance as may be necessary to assist such council with its responsibilities, including the provision of medals, the preparation and provision of applications, guidance on disposition of applications, arrangements with respect to local award ceremonies, and other responsibilities of such council;

“(C) conducting of outreach activities to establish new State and local Congressional Award Councils, particularly in inner-city areas and rural areas;

State and local
governments.
Urban areas.
Rural areas.

“(D) fundraising;

“(E) conducting of an annual Gold Medal Awards ceremony in the District of Columbia;

District of
Columbia.

“(F) consideration of implementation of the provisions of this Act relating to scholarships; and

“(G) carrying out of duties relating to management of the national office of the Congressional Award Program, including supervision of office personnel and of the office budget.”.

d) REPORTS AND TERMINATION OF BOARD.—Section 9 of the Congressional Award Act is amended to read as follows:

“REPORTING AND TERMINATION PROVISIONS

“SEC. 9. (a) Except as provided in subsection (b), the Board shall terminate on November 15, 1989. 2 USC 808.

(b)(1) If the Board fails to submit any report required by subsection (c), the Board shall terminate within 30 days of the failure.

(2) Unless the Board is in compliance with subsection (b) of section 7 not later than September 30, 1989, the Board shall terminate on October 30, 1989.

(3) If the Board makes the certification required by subsection (c), the Board shall terminate on September 30, 1990.

(c)(1) The Board shall submit to the appropriate committees of the Congress 4 reports that each include at least—

“(A) a description of all fundraising activities conducted by the Board during—

“(i) in the case of the first report, the period beginning on the date of the enactment of the Congressional Award Act Amendments of 1988 and ending on the date of the report; and

“(ii) in the case of the second, third, and final reports, the period beginning on the date the previous report was submitted under this subsection and ending on the date of the report;

“(B) a description of the fiscal position of the Board as of the date of the report, including—

“(i) available cash;

“(ii) outstanding debts; and

“(iii) prospective operating expenses;

“(C) proposed fundraising activities to be carried out during the period beginning on the date of the report and ending on the date of the succeeding report;

“(D) the number and location of Congressional Award Councils established since the previous report in States or congressional districts where no such councils previously existed; and

“(E) any evidence of contacts between the Board or the Congressional Award Foundation and any congressional office, including copies of any correspondence between the Board or the Congressional Award Foundation and any congressional office.

“(2) The reports required by paragraph (1) shall be submitted as follows:

“(A) The first report shall be submitted not later than January 1, 1989.

“(B) The second report shall be submitted not later than April 1, 1989.

“(C) The third report shall be submitted not later than July 1, 1989.

“(D) The final report shall be submitted not later than September 30, 1989.

“(3) The date of the submission of a report under this subsection shall be considered to be the date of the report is registered to be mailed by certified mail, return receipt requested.

“(d) Not later than September 30, 1989, the Director shall certify to the congressional leadership that the Board complied with the requirements of this section in a timely manner.

“(e) Within 30 days of the submission of each report required under subsection (c) and the submission of the certification required under subsection (d), the Comptroller General of the United States shall submit to the appropriate committees of the Congress a report verifying the information submitted in the report or certification, as appropriate.

“(f) Prior to termination of the Board under this section, the Board shall take such actions as may be required to provide for the dissolution of any corporation established by the Board under section 7(h). The Board shall set forth, in its bylaws, the procedures for dissolution to be followed by the Board.”

(e) CONFORMING AMENDMENT.—Section 8(a) is amended by striking “section 7(g)” and inserting “section 7(h)”.

SEC. 3. TRANSITION PROVISIONS.

Not later than 120 days after the date of the enactment of this Act, the congressional leadership shall appoint members to fill vacancies on the Congressional Award Board in accordance with section 4(a) of the Congressional Award Act (as amended by section 2(b)). In filling such vacancies, the congressional leadership shall first appoint members from the Congressional Award Association and local Congressional Award Councils in accordance with section 4(a) of the Congressional Award Act (as amended by section 2(b)).

SEC. 4. REPORT.

(a) IN GENERAL.—The Congressional Award Board shall submit to the appropriate committees and subcommittees of the Congress a report that describes in detail—

2 USC 807.

2 USC 803 note.

- (1) the goals and objectives of the Board;
 - (2) the role of Congressional participation in fulfilling such goals and objectives; and
 - (3) plans for activities to be conducted during the remainder of the duration of the Congressional Award Program established under section 3 of the Congressional Award Act, consistent with the duties and requirements established under such Act.
- (b) **TIME FOR REPORT.**—The report required by subsection (a) shall be submitted not later than 180 days after the date of the enactment of this Act.

Approved November 17, 1988.

LEGISLATIVE HISTORY—H.R. 5315:

CONGRESSIONAL RECORD, Vol. 134 (1988):
Oct. 3, 4, considered and passed House.
Oct. 19, considered and passed Senate.

Public Law 100-675
100th Congress

An Act

Nov. 17, 1988

[S. 795]

To provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, to authorize the lining of the All American Canal, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

San Luis Rey
Indian Water
Rights
Settlement Act.

TITLE I—SAN LUIS REY INDIAN WATER RIGHTS
SETTLEMENT ACT

SEC. 101. SHORT TITLE.

This title may be cited as the “San Luis Rey Indian Water Rights Settlement Act”.

SEC. 102. DEFINITIONS.

For purposes of this title:

(1) **BANDS.**—The term “Bands” means the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians which are recognized by the Secretary of the Interior as the governing bodies of their respective reservations in San Diego County, California.

(2) **FUND.**—The term “Fund” means the San Luis Rey Tribal Development Fund established by section 105.

(3) **INDIAN WATER AUTHORITY.**—The term “Indian Water Authority” means the San Luis Rey River Indian Water Authority, an intertribal Indian entity established by the Bands.

(4) **LOCAL ENTITIES.**—The term “local entities” means the city of Escondido, California; the Escondido Mutual Water Company; and the Vista Irrigation District.

(5) **SETTLEMENT AGREEMENT.**—The term “settlement agreement” means the agreement to be entered into by the United States, the Bands, and the local entities which will resolve all claims, controversies, and issues involved in all the pending proceedings among the parties.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(7) **SUPPLEMENTAL WATER.**—The term “supplemental water” means water from a source other than the San Luis Rey River.

SEC. 103. CONGRESSIONAL FINDINGS; LOCAL CONTRIBUTIONS; PURPOSE.

(a) **FINDINGS.**—The Congress finds the following:

(1) The Reservations established by the United States for the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians on or near the San Luis Rey River in San Diego County, California, need a reliable source of water.

(2) Diversions of water from the San Luis Rey River for the benefit of the local entities commenced in the early 1890s and

continue to be an important source of supply to those communities.

(3) The inadequacy of the San Luis Rey River to supply the needs of both the Bands and the local entities has given rise to litigation to determine the rights of various parties to water from the San Luis Rey River.

(4) The pendency of the litigation has—

(A) severely impaired the Bands' efforts to achieve economic development on their respective reservations,

(B) contributed to the continuation of high rates of unemployment among the members of the Bands,

(C) increased the extent to which the Bands are financially dependent on the Federal Government, and

(D) impeded the Bands and the local entities from taking effective action to develop and conserve scarce water resources and to preserve those resources for their highest and best uses.

(5) In the absence of a negotiated settlement—

(A) the litigation, which was initiated almost 20 years ago, is likely to continue for many years,

(B) the economy of the region and the development of the reservations will continue to be adversely affected by the water rights dispute, and

(C) the implementation of a plan for improved water management and conservation will continue to be delayed.

(6) An agreement in principle has been reached under which a comprehensive settlement of the litigation would be achieved, the Bands' claims would be fairly and justly resolved, the Federal Government's trust responsibility to the Bands would be fulfilled, and the local entities and the Bands would make fair and reasonable contributions.

(7) The United States should contribute to the settlement by providing funding and delivery of water from a supplemental source. Water developed through conjunctive use of groundwater on public lands in southern California or water to be reclaimed from lining the previously unlined portions of the All American Canal can provide an appropriate supplemental water source.

(b) **PURPOSE.**—It is the purpose of this title to provide for the settlement of the reserved water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, in a fair and just manner which—

(1) provides the Bands with a reliable water supply sufficient to meet their present and future needs;

(2) promotes conservation and the wise use of scarce water resources in the upper San Luis Rey River System;

(3) establishes the basis for a mutually beneficial, lasting, and cooperative partnership among the Bands and the local entities to replace the adversarial relationships that have existed for several decades; and

(4) fosters the development of an independent economic base for the Bands.

SEC. 104. SETTLEMENT OF WATER RIGHTS DISPUTE.

Sections 106 and 109 of this Act shall take effect only when—

(1) the United States; the City of Escondido, California; the Escondido Mutual Water Company; the Vista Irrigation Dis-

tract; and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians have entered into a settlement agreement providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties in the United States District Court for the Southern District of California and the Federal Energy Regulatory Commission; and

(2) stipulated judgments or other appropriate final dispositions have been entered in said proceedings.

SEC. 105. SAN LUIS REY TRIBAL DEVELOPMENT FUND.

(a) **ESTABLISHMENT OF FUND.**—There is hereby established within the Treasury of the United States the “San Luis Rey Tribal Development Fund”.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) There is authorized to be appropriated to the San Luis Rey Tribal Development Fund \$30,000,000, together with interest accruing from the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Federal obligations of comparable maturity. Following execution of the settlement agreement, judgments, and other appropriate final dispositions specified in section 104, the Secretary of the Treasury shall allocate and make available such monies from the trust fund as are requested by the Indian Water Authority.

(2) Any monies not allocated to the Indian Water Authority and remaining in the fund authorized by this section shall be invested by the Secretary of the Treasury in interest-bearing deposits and securities in accordance with the Act of June 24, 1938 (25 U.S.C. 162a). Such interest shall be made available to the Indian Water Authority in the same manner as the monies identified in paragraph (1).

SEC. 106. DUTIES OF THE UNITED STATES FOR DEVELOPMENT OF SUPPLEMENTAL WATER.

(a) **OBLIGATION TO ARRANGE FOR DEVELOPMENT OF WATER FOR BANDS AND LOCAL ENTITIES.**—To provide a supplemental water supply for the benefit of the Bands and the local entities, subject to the provisions of the settlement agreement, the Secretary is authorized and directed to:

(1) arrange for the development of not more than a total of 16,000 acre-feet per year of supplemental water from public lands within the State of California outside the service area of the Central Valley Project; or

(2) arrange to obtain not more than a total of 16,000 acre-feet per year either from water conserved by the works authorized in title II of this Act, or through contract with the Metropolitan Water District of Southern California.

Nothing in this section or any other provision of this title shall authorize the construction of any new dams, reservoirs or surface water storage facilities.

(b) **AUTHORITY TO UTILIZE EXISTING PROGRAMS AND PUBLIC LANDS.**—To carry out the provisions of subsection (a), the Secretary may, subject to the rights and interests of other parties and to the extent consistent with the requirements of the laws of the State of California and such other laws as may be applicable:

(1) utilize existing programs and authorities; and

(2) permit water to be pumped from beneath public lands and, in conjunction therewith, authorize a program to recharge some or all of the groundwater that is so pumped.

c) **TERMS AND CONDITIONS OF WATER DELIVERIES.**—Such supplemental water shall be provided for use by the Bands on their reservation and the local entities in their service areas pursuant to the terms of the settlement agreement and shall be delivered at rates, on a schedule and under terms and conditions to be agreed upon by the Secretary, the Indian Water Authority, the local entities and any agencies participating in the delivery of the water. It may be exchanged for water from other sources for use on the Bands' reservations or in the local entities' service areas.

d) **COST OF DEVELOPING AND DELIVERING WATER.**—The cost of developing and delivering supplemental water pursuant to this title shall not be borne by the United States, and no Federal appropriations are authorized for this purpose.

e) **REPORT TO CONGRESS.**—Notwithstanding the provisions of section 104, within nine months following enactment of this Act, the Secretary shall report to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate on (1) the Secretary's recommendations for providing a supplemental water source including a description of the works, their costs and impacts, and the method of financing; and (2) the proposed form of contract for delivery of supplemental water to the Bands and the local entities. When 60 calendar days have elapsed following submission of the Secretary's report, the Secretary shall execute the necessary contracts and carry out the recommended program unless otherwise directed by the Congress.

Contracts.

C. 107. ESTABLISHMENT, STATUS, AND GENERAL POWERS OF SAN LUIS REY RIVER INDIAN WATER AUTHORITY.

a) **ESTABLISHMENT OF INDIAN WATER AUTHORITY APPROVED AND RECOGNIZED.**—

(1) **IN GENERAL.**—The establishment by the Bands of the San Luis Rey River Indian Water Authority as a permanent intertribal entity pursuant to duly adopted ordinances and the power of the Indian Water Authority to act for the Bands are hereby recognized and approved.

(2) **LIMITATION ON POWER TO AMEND OR MODIFY ORDINANCES.**—Any proposed modification or repeal of any ordinance referred to in paragraph (1) must be approved by the Secretary, except that no such approval may be granted unless the Secretary finds that the proposed modification or repeal will not interfere with or impair the ability of the Indian Water Authority to carry out its responsibilities and obligations pursuant to this Act and the settlement agreement.

b) **STATUS AND GENERAL POWERS OF INDIAN WATER AUTHORITY.**—

(1) **STATUS AS INDIAN ORGANIZATION.**—To the extent provided in the ordinances of the Bands which established the Indian Water Authority, such Authority shall be treated as an Indian entity under Federal law with which the United States has a trust relationship.

(2) **POWER TO ENTER INTO AGREEMENTS.**—The Indian Water Authority may enter into such agreements as it may deem necessary to implement the provisions of this title and the settlement agreement.

(3) **INVESTMENT POWER.**—Notwithstanding paragraph (1) or any other provision of law, the Indian Water Authority shall have complete discretion to invest and manage its own funds: *Provided*, That the United States shall not bear any obligation or liability regarding the investment, management or use of such funds.

(4) **LIMITATION ON SPENDING AUTHORITY.**—All funds of the Indian Water Authority which are not required for administrative or operational expenses of the Authority or to fulfill obligations of the Authority under this title, the settlement agreement, or any other agreement entered into by the Indian Water Authority shall be invested or used for economic development of the Bands, the Bands' reservation lands, and their members. Such funds may not be used for per capita payments to members of any Band.

(c) **INDIAN WATER AUTHORITY TREATED AS TRIBAL GOVERNMENT FOR CERTAIN PURPOSES.**—The Indian Water Authority shall be considered to be an Indian tribal government for purposes of section 7871(a)(4) of the Internal Revenue Code of 1986.

SEC. 108. DELEGATION OF AUTHORITY.

contracts.

The Secretary and the Attorney General of the United States, acting on behalf of the United States, and the Bands, acting through their duly authorized governing bodies, are authorized to enter into the settlement agreement. The Secretary is authorized to enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the provisions of this title.

SEC. 109. AUTHORITY OF THE FEDERAL ENERGY REGULATORY COMMISSION AND THE SECRETARY OF THE INTERIOR OVER POWER FACILITIES AND GOVERNMENT AND INDIAN LANDS.

(a) **POWER FACILITIES.**—Any license issued under the Act of June 10, 1920 (16 U.S.C. 791a et seq., commonly referred to as Part I of the Federal Power Act) for any part of the system that diverts the waters of the San Luis Rey River originating above the intake to the Escondido Canal—

(1) shall be subject to all of the terms, conditions, and provisions of the settlement agreement and this title; and

(2) shall not in any way interfere with, impair or affect the ability of the Bands, the local entities and the United States to implement, perform, and comply fully with all of the terms, conditions, and provisions of the settlement agreement.

(b) **INDIAN AND GOVERNMENT LANDS.**—Notwithstanding any provision of Part I of the Federal Power Act to the contrary, the Secretary is exclusively authorized, subject to subsection (c), to lease, grant rights-of-way across, or transfer title to, any Indian tribal or allotted land, or any other land subject to the authority of the Secretary, which is used, or may be useful, in connection with the operation, maintenance, repair, or replacement of the system to divert, convey, and store the waters of the San Luis Rey River originating above the intake to the Escondido Canal or the supplemental water supplied by the Secretary under this Act.

(c) **APPROVAL BY INDIAN BANDS; COMPENSATION TO INDIAN OWNERS.**—Any disposition of Indian tribal or allotted land by the Secretary under the subsection (b) shall be subject to the approval of the governing Indian Band. Any individual Indian owner or allottee

whose land is disposed of by any action of the Secretary under subsection (b) shall be entitled to receive just compensation.

SEC. 110. RULES OF CONSTRUCTION.

(a) **EMINENT DOMAIN.**—No provision of this title shall be construed as authorizing the acquisition by the Federal Government of any water or power supply or any water conveyance or power transmission facility through the power of eminent domain or any other nonconsensual arrangement.

(b) **STATUS AND AUTHORITY OF INDIAN WATER AUTHORITY.**—No provision of this title shall be construed as creating any implication with respect to the status or authority which the Indian Water Authority would have under any other law or rule of law in the absence of this title.

SEC. 111. COMPLIANCE WITH BUDGET ACT.

To the extent any provision of this title provides new spending authority described in section 401(c)(2)(A) of the Congressional Budget Act of 1974, such authority shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

TITLE II—ALL AMERICAN CANAL LINING

SEC. 201. CONGRESSIONAL FINDINGS.

Congress hereby finds and declares that:

(1) The Boulder Canyon Project Act ("Project Act") was enacted to conserve the waters of the lower Colorado River for a number of public purposes, including the storage and delivery of water for reclamation of public lands and other uses exclusively within the United States.

(2) The Secretary of the Interior ("Secretary") was authorized by the Project Act to construct what is now Hoover Dam, Lake Mead, and the All American Canal and "to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon . . .".

(3) The Project Act provides that "no person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract" and in California the Secretary has entered into water delivery contracts with public agencies.

(4) The Secretary's water delivery contracts incorporate the Seven Party Agreement of August 18, 1931, under which water that is not applied to beneficial use by a California Contractor is available for use by the California Contractor with the next priority.

(5) The available supply of Colorado River water in California is insufficient to meet the priorities set forth in the Seven Party Agreement.

(6) The Secretary's water delivery contracts with the California Contractors provide that the total beneficial consumptive use under the first three priorities established in the contracts shall not exceed 3.85 million acre-feet of water per year.

(7) The rights of all California Contractors are defined by the Project Act, their contracts, and decisions and decrees of the United States Supreme Court.

(8) The Secretary has promulgated regulations pursuant to his authority under the Project Act establishing procedures to assure that deliveries of Colorado River water to each user will not exceed those reasonably required for its beneficial use.

(9) The Secretary has constructed the All American Canal and delivers water to the Imperial Irrigation District and Coachella Valley Water District under water delivery contracts by which those districts are entitled to receive deliveries of water in amounts reasonably required for potable and irrigation purposes.

(10) Studies conducted by the Secretary show that significant quantities of water currently delivered into the All American Canal and its Coachella Branch are lost by seepage from the canals and that such losses could be reduced or eliminated by lining these canals.

SEC. 202. DEFINITIONS.

As used in this title, the term—

(1) "All American Canal Service Area" shall mean the Imperial Service Area and the Coachella Service Area as defined in the Imperial Irrigation District and Coachella Valley Water District water delivery contracts with the Secretary dated December 1, 1932, and October 14, 1934, respectively.

(2) "California Contractors" shall mean the Palo Verde Irrigation District; Imperial Irrigation District; Coachella Valley Water District; and, The Metropolitan Water District of Southern California.

(3) "Participating Contractor" shall mean a California Contractor who elects to participate in, and fund, all or a portion of the works described in section 203 of this title.

(4) "Project Act" shall mean the Boulder Canyon Project Act (45 Stat. 1057; 43 U.S.C. 617-617t).

(5) "Secretary" shall mean the Secretary of the Interior.

(6) "Seven Party Agreement" shall mean that agreement dated August 18, 1931, providing the schedule of priorities for use of the waters of the Colorado River within California as published in section 6 of the General Regulations of the Secretary of the Interior dated September 28, 1931, and incorporated in the Secretary's water delivery contracts with the California Contractors.

(7) "Works" shall mean the facilities and measures specified in section 203(a) of this title.

SEC. 203. AUTHORIZATION OF PROJECT.

(a) CANAL LINING AUTHORIZED.—The Secretary, in order to reduce the seepage of water, is authorized to—

(1) construct a new lined canal or to line the previously unlined portions of the All American Canal from the vicinity of Pilot Knob to Drop 4 and its Coachella Branch from Siphon 7 to Siphon 32, or construct seepage recovery facilities in the vicinity of Pilot Knob to Drop 4, including measures to protect public safety; and

(2) implement measures for the replacement of incidental fish and wildlife values adjacent to the canals foregone as a result of the lining of the canal or mitigation of resulting impacts on fish and wildlife resources from construction of a new canal, or a portion thereof. Such measures shall be on an acre-for-acre

basis, based on ecological equivalency, and shall be implemented concurrent with construction of the works. The Secretary shall make available such public lands as he deems appropriate to meet the requirements of this subsection. The Secretary is authorized to develop ground water, with a priority given to nonpotable sources, from public lands to supply water for fish and wildlife purposes.

Public lands.

(b) **OPERATION AND MAINTENANCE DETERMINATION.**—The Secretary shall determine the impact of the works on the cost of operation and maintenance and the existing regulating and storage capacity of the All American Canal and its Coachella Branch. If the works result in any added operation and maintenance costs which exceed the benefits derived from increasing the regulating and storage capacity of the canals to the Imperial Irrigation District or the Coachella Valley Water District, the Secretary shall include such costs in the funding agreement for the works.

(c) **CONSTRUCTION AND FUNDING AGREEMENT.**—The Secretary, subject to the provision of section 205 of this title, may enter into an agreement or agreements with one or more of the California Contractors for the construction or funding of all or a portion of the works authorized in subsection (a) of this section. The Secretary shall ensure that such agreement or agreements include provisions setting forth—

(1) the responsibilities of the parties to the agreement for funding and assisting with implementing all the duties of the Secretary identified in subsections (a) and (b) of this section;

(2) the obligation of the Participating Contractors to pay the additional costs identified in subsection (b) of this section as a result of the works;

(3) the procedures and requirement for approval and acceptance by the Secretary of such works, including approval of the quality of construction, measures to protect the public health and safety, mitigation or replacement, as appropriate, of fish and wildlife resources or values, and procedures for operation, maintenance, and protection of such works;

Safety.

(4) the rights, responsibilities, and liabilities of each party to the agreement;

(5) the term of such agreements which shall not exceed 55 years and may be renewed if consented to by Imperial Irrigation District and Coachella Valley Water District according to their respective interests in the conserved water. If the funding agreements are not renewed, the Participating Contractors shall be compensated by the Imperial Irrigation District or the Coachella Valley Water District for their participation in the cost of the works. Such compensation shall be equal to the replacement value of the works less depreciation. Such depreciated value is to be based upon an engineering analysis by the Secretary of the remaining useful life of the works at the expiration of the funding agreements;

(6) the obligation of the Participating Contractors or the United States for repair or other corrective action which would not have occurred in the absence of the works in the case of earthquake or other acts of God;

(7) the obligation of the Participating Contractors or the United States to hold harmless Imperial Irrigation District and Coachella Valley Water District for liability to third parties

which occurs after the Secretary accepts the works and would not have occurred in the absence of the works; and,

(8) the requirement that the remaining net obligations of the United States for construction of the All American Canal owed on the date of enactment of this Act be paid by the Participating Contractors.

(d) **TITLE TO THE WORKS.**—A Participating Contractor shall not receive title to any works constructed pursuant to this section by virtue of its participation in the funding for the works. Title to such works shall remain with the United States. Upon completion of the works and upon request by an All American Canal Contractor (City of San Diego, Imperial Irrigation District, or Coachella Valley Water District) for transfer of title of the All American Canal, Coachella Branch, and appurtenant structures below Syphon Drive (including the works constructed pursuant to this section), the Secretary shall, within 90 days, take such necessary action as the Secretary deems appropriate to complete transfer of title to the requesting contractor, according to the contractor's respective interest unless the Secretary determines that such transfer would impair any existing rights of other All American Canal contractors or the rights or obligations of the United States, or would inhibit the Secretary's ability to fulfill his responsibility under the Project Act or other applicable law.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) No Federal funds are authorized to be appropriated to the Secretary for construction of the works described in subsection (a)(1) of this section.

(2) The Secretary is authorized to receive funds in advance from one or more Participating Contractors pursuant to the Contributed Funds Act of March 4, 1921 (41 Stat. 1401) under terms and conditions acceptable to the Secretary in order to carry out the Secretary's responsibilities under subsections (b), and (c) of this section.

SEC. 204. USE OF CONSERVED WATER.

(a) **SECRETARIAL DETERMINATION.**—The Secretary shall determine the quantity of water conserved by the works and may revise such determination at reasonable intervals based on such information as the Secretary deems appropriate. Such initial determination and subsequent revision shall be made in consultation with the California Contractors.

(b) **BENEFICIAL USE IN CALIFORNIA.**—

(1) The water identified in subsection (a) of this section shall be made available, subject to the approval requirement established in section 203(c)(3), for consumptive use by California Contractors within their service areas according to their priorities under the Seven Party Agreement.

(2) If the water identified in subsection (a) of this section is used during the term of the funding agreements by (A) a California Contractor other than a Participating Contractor, (B) by a Participating Contractor in an amount in excess of its proportionate share as measured by the amount of its contributed funds in relation to the total contributed funds, such contractor shall reimburse the Participating Contractors for the annualized amounts of their respective contributions which funded the conservation of water so used, any added costs of operation and maintenance as determined in section 203(b), and

related mitigation costs under section 203(a)(2). Such reimbursement shall be based on the costs each Participating Contractor incurs in contributing funds and its total contribution, and the life of the works.

C. 205. IMPLEMENTATION.

The authorities contained in this title shall take effect upon enactment and the Secretary is authorized to proceed with all reconstruction activities. For a period not to exceed 15 months thereafter, or such additional period as the Secretary and the Imperial Irrigation District, the Coachella Valley Water District, and the Metropolitan Water District of Southern California may agree, the Secretary shall provide to the Imperial Irrigation District the opportunity to become the sole Participating Contractor for the works on the All American Canal from Pilot Knob to Drop 4, and assume all non-Federal obligations to finance the works. After the expiration of the 15-month period or any extension thereto, the Secretary is authorized to enter into agreements with the California Contractors as provided in section 203(c) of this Act.

C. 206. PROTECTION OF EXISTING WATER USES.

As of the effective date of this Act, any action of the Secretary to acquire, sell, grant, dispose, lease or provide rights-of-way across Federal public domain lands located within the All American Canal Service Area shall include the following conditions: (1) those lands within the boundary of the Imperial Irrigation District as of July 1, 1988, as shown in Imperial Irrigation District Drawing 7534, excluding Federal lands without a history of irrigation or other water using purposes; (2) those lands within the Imperial Irrigation District Service Area as shown on General Map of Imperial Irrigation District dated January 1988 (Imperial Irrigation District No. 27F 89) with a history of irrigation or other water using purposes; and those lands within the Coachella Valley Water District's Improvement District No. 1 shall have a priority for irrigation or other water using purposes over the lands benefiting from the action of the Secretary: *Provided*, That rights to use water on lands having such priority may be transferred for use on lands having a lower priority if such transfer does not deprive other lands with the higher priority of Colorado River water that can be put to reasonable and beneficial use.

C. 207. WATER CONSERVATION STUDY.

(a) **PREPARATION AND TRANSMITTAL.**—Any agreement entered into pursuant to section 203 between the Secretary and The Metropolitan Water District of Southern California (hereafter referred to as the "District") shall require, prior to the initiation of construction, that in no case later than two years from the date of enactment of this Act, the preparation and transmittal to the Secretary by the District of a water conservation study as described in this section, together with the conclusions and recommendations of the District.

(b) **PURPOSE.**—The purpose of the study required by this section shall be the evaluation of various pricing options within the District's service area, an estimation of demand elasticity for each of the principal categories of end use of water within the District's service area, and the estimation of the quantity of water saved under the various options evaluated.

(c) **PRICING ALTERNATIVES.**—Such study shall include a thorough evaluation of all the pricing alternatives, alone and in various combinations, that could be employed by the District, including but not limited to—

- (1) recovery of all costs through water rates;
- (2) seasonal rate differentials;
- (3) dry year surcharges;
- (4) increasing block rates; and
- (5) marginal cost pricing.

(d) **PUBLIC REVIEW AND COMMENT.**—Not less than 90 days prior to its transmittal to the Secretary, the study, together with the District's preliminary conclusions and recommendations and all supporting documentation, shall be available for public review and comment, including the transcripts of public hearings which shall be held during the course of the study. All significant comments, and the District's response thereto, shall accompany the study transmitted to the Secretary.

(e) **LIMITATION ON INITIATION OF CONSTRUCTION.**—Prior to the initiation of construction, the Secretary shall determine that the requirements of this section have been satisfied. Nothing in this section shall be deemed to authorize the Secretary to require the implementation of any policies or recommendations contained in the study.

SEC. 208. SALTON SEA NATIONAL WILDLIFE REFUGE.

Within 90 days from the date of enactment of this title, the Secretary is directed to prepare and submit a report to the Congress which describes the current condition of habitat at the Salton Sea National Wildlife Refuge, California. The report shall also—

- (1) assess water quality conditions within the refuge;
- (2) identify actions which could be undertaken to improve habitat at the refuge;
- (3) describe the status of wildlife, including waterfowl populations, and how wildlife populations have fluctuated or otherwise changed over the past ten years; and
- (4) describe current and future water requirements of the refuge, the availability of funds for water purchases, and steps which may be necessary to acquire additional water supplies, if needed.

SEC. 209. RELATION TO RECLAMATION LAW.

No contract or agreement entered into pursuant to this title shall be deemed to be a new or amended contract for the purposes of

section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97-293, 96 Stat. 1263).

Approved November 17, 1988.

LEGISLATIVE HISTORY—S. 795:

HOUSE REPORTS: No. 100-780 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-47 and No. 100-254 (both from Select Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 133 (1987): Dec. 19, considered and passed Senate.

Vol. 134 (1988): Oct. 3, 4, considered and passed House, amended.

Oct. 19, Senate concurred in House amendment with an amendment.

Oct. 20, House concurred in Senate amendment.

Public Law 100-676
100th Congress

An Act

Nov. 17, 1988

[S. 2100]

Water Resources
Development
Act of 1988.

33 USC 2201
note.

To provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Water Resources Development Act of 1988”.

(b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Secretary defined.
- Sec. 3. Project authorizations.
- Sec. 4. Project modifications.
- Sec. 5. Comments on certain changes in operations of reservoirs.
- Sec. 6. Operation of certain projects to enhance recreation.
- Sec. 7. Collaborative research and development.
- Sec. 8. Innovative technology.
- Sec. 9. Technical assistance demonstration program.
- Sec. 10. Periodic statements.
- Sec. 11. Simulation model of South Central Florida hydrologic ecosystem.
- Sec. 12. Section 215 reimbursement limitation per project.
- Sec. 13. Additional 10 percent payment over 30 years for construction of harbors.
- Sec. 14. Compliance with flood plain management and insurance programs.
- Sec. 15. Federal repayment district.
- Sec. 16. Abandoned and wrecked vessels.
- Sec. 17. Flood warning and response system.
- Sec. 18. Small boat harbor, Buffalo Harbor, New York.
- Sec. 19. Lakeport Lake, California.
- Sec. 20. Sacramento, California.
- Sec. 21. Mississippi River headwaters reservoirs.
- Sec. 22. Hearing Island inlet, Duluth Harbor, Minnesota.
- Sec. 23. Louisiana water supply.
- Sec. 24. Contained spoil disposal facilities in the Great Lakes and their connecting channels.
- Sec. 25. South pier to Charlevoix Harbor, Charlevoix, Michigan.
- Sec. 26. Coyote and Berryessa Creeks, California.
- Sec. 27. Land conveyance, Whittier Narrows Dam, Los Angeles County, California.
- Sec. 28. Land conveyance, Ottawa, Illinois.
- Sec. 29. Land transfer in Whitman County, Washington.
- Sec. 30. Lesage/Greenbottom Swamp, West Virginia.
- Sec. 31. Portuguese and Bucana Rivers, Puerto Rico.
- Sec. 32. Alternatives to mud dump for disposal of dredged material.
- Sec. 33. Missouri River between Fort Peck Dam, Montana, and Gavins Point Dam, South Dakota and Nebraska.
- Sec. 34. New York Harbor drift removal project.
- Sec. 35. Placement of dredged beach quality sand on beaches.
- Sec. 36. Restoration, Ventura to Pierpont Beach, California.
- Sec. 37. William G. Stone lock tolls.
- Sec. 38. Declaration of nonnavigability for portions of the Delaware River.
- Sec. 39. Declaration of nonnavigability for portions of Coney Island Creek and Gravesend Bay, New York.
- Sec. 40. Extension of modified water delivery schedules, Everglades National Park.
- Sec. 41. Period of environmental demonstration program.
- Sec. 42. Federal hydroelectric power modernization study.
- Sec. 43. Water quality effects of hydroelectric facilities.
- Sec. 44. GAO review of civil works program.
- Sec. 45. Des Plaines River wetlands demonstration project authorization.

46. Kissimmee River, Florida.
47. Water resources studies.
48. Division laboratory.
49. Water resources management planning service for the Hudson River Basin.
50. Technical resource service, Red River Basin, Minnesota and North Dakota.
51. Correction of descriptions.
52. Project deauthorizations.
53. Namings.
54. Declaration of nonnavigability of bodies of water in Ridgefield, New Jersey.

2. SECRETARY DEFINED.

For purposes of this Act, the term "Secretary" means the Secretary of the Army.

33 USC 2201
note.

3. PROJECT AUTHORIZATIONS.

AUTHORIZATION OF CONSTRUCTION.—Except as otherwise provided in this subsection, the following projects for water resources development and conservation and other purposes are authorized to be carried out by the Secretary substantially in accordance with the terms and subject to the conditions recommended in the respective reports designated in this subsection:

(1) **LOWER MISSION CREEK, SANTA BARBARA, CALIFORNIA.**—The project for flood control, Lower Mission Creek, Santa Barbara, California: Report of the Chief of Engineers, dated March 25, 1988, at a total cost of \$10,420,000, with an estimated first Federal cost of \$5,909,000, and an estimated first non-Federal cost of \$4,511,000.

(2) **FT. PIERCE HARBOR, FLORIDA.**—The project for navigation, Ft. Pierce Harbor, Florida: Report of the Chief of Engineers, dated December 14, 1987, at a total cost of \$6,742,000, with an estimated first Federal cost of \$4,319,000, and an estimated first non-Federal cost of \$2,423,000.

(3) **NASSAU COUNTY, FLORIDA.**—The project for beach erosion control, Nassau County (Amelia Island), Florida: Report of the Chief of Engineers, dated May 19, 1986, at a total cost of \$5,753,000, with an estimated first Federal cost of \$4,619,000, and an estimated first non-Federal cost of \$1,134,000.

(4) **PORT SUTTON CHANNEL, FLORIDA.**—The project for navigation, Port Sutton Channel, Florida: Report of the Chief of Engineers, dated March 28, 1988, at a total cost of \$2,670,000, with an estimated first Federal cost of \$1,155,000, and an estimated first non-Federal cost of \$1,515,000; except that construction of such project may not be initiated until the Secretary determines that such project serves more than one beneficiary.

(5) **CHICAGOLAND UNDERFLOW PLAN, ILLINOIS.**—The project for flood control, Chicagoland Underflow Plan, Illinois: Report of the Chief of Engineers, dated March 25, 1988, at a total cost of \$419,000,000, with an estimated first Federal cost of \$314,250,000, and an estimated first non-Federal cost of \$104,750,000.

(6) **LOWER OHIO RIVER, ILLINOIS AND KENTUCKY.**—The project for navigation, Lower Ohio River, Locks and Dams 52 and 53, Illinois and Kentucky: Report of the Chief of Engineers, dated August 20, 1986, at a total cost of \$775,000,000, with a first Federal cost of \$775,000,000, and with the costs of construction of the project to be paid one-half from amounts appropriated from the general fund of the Treasury and one-half from amounts appropriated from the Inland Waterways Trust Fund.

(7) **HAZARD, KENTUCKY.**—The project for flood control, Hazard, Kentucky: Report of the Chief of Engineers, dated October 30, 1986, at a total cost of \$7,450,000, with an estimated first Federal cost of \$5,590,000 and an estimated first non-Federal cost of \$1,860,000.

(8) **MISSISSIPPI AND LOUISIANA ESTUARINE AREAS, MISSISSIPPI AND LOUISIANA.**—The project for environmental enhancement, Mississippi and Louisiana Estuarine Areas, Mississippi and Louisiana: Report of the Chief of Engineers, dated May 19, 1986, at a total cost of \$59,300,000.

(9) **WOLF AND JORDAN RIVERS, MISSISSIPPI.**—The project for navigation, Wolf and Jordan Rivers and Bayou Portage, Mississippi: Report of the Chief of Engineers, dated June 10, 1987, at a total cost of \$2,290,000, with an estimated first Federal cost of \$1,620,000 and an estimated first non-Federal cost of \$670,000.

(10) **TRUCKEE MEADOWS, NEVADA.**—The project for flood control, Truckee Meadows, Nevada: Report of the Chief of Engineers, dated July 25, 1986, at a total cost of \$78,400,000, with an estimated first Federal cost of \$39,200,000 and an estimated first non-Federal cost of \$39,200,000; except that the Secretary is authorized to carry out fish and wildlife enhancement as a purpose of such project, including fish and wildlife enhancement measures described in the District Engineer's Report, dated July 1985, at an additional total cost of \$4,140,000.

(11) **WEST COLUMBUS, OHIO.**—The project for flood control, Scioto River, West Columbus, Ohio: Report of the Chief of Engineers, dated February 9, 1988, at a total cost of \$31,562,000, with an estimated first Federal cost of \$23,671,000, and an estimated first non-Federal cost of \$7,891,000.

(12) **DELAWARE RIVER, PENNSYLVANIA AND DELAWARE.**—The project for navigation, Delaware River, Philadelphia to Wilmington, Pennsylvania and Delaware: Report of the Chief of Engineers, dated June 15, 1986, at a total cost of \$17,200,000, with an estimated first Federal cost of \$9,100,000 and an estimated first non-Federal cost of \$8,100,000.

(13) **CYPRESS CREEK, TEXAS.**—The project for flood control, Cypress Creek, Texas: Report of the Chief of Engineers, dated October 12, 1987, at a total project cost of \$114,200,000, with an estimated first Federal cost of \$84,900,000 and an estimated first non-Federal cost of \$29,300,000.

(14) **FALFURRIAS, TEXAS.**—The project for flood control, Falfurrias, Texas: Report of the Chief of Engineers, dated March 15, 1988, at a total cost of \$31,800,000, with an estimated first Federal cost of \$15,900,000, and an estimated first non-Federal cost of \$15,900,000.

(15) **GUADALUPE RIVER, TEXAS.**—The project for navigation, Guadalupe River to Victoria, Texas: Report of the Chief of Engineers, dated September 1, 1987, at a total cost of \$23,900,000, with an estimated first Federal cost of \$15,100,000, and an estimated first non-Federal cost of \$8,800,000.

(16) **MCGRATH CREEK, WICHITA FALLS, TEXAS.**—The project for flood control, McGrath Creek, Wichita Falls, Texas: Report of the Chief of Engineers, dated March 25, 1988, at a total cost of \$9,100,000, with an estimated first Federal cost of \$6,800,000 and an estimated first non-Federal cost of \$2,300,000.

(b) **MAXIMUM COST OF PROJECTS.**—Section 902 of the Water Resources Development Act of 1986 (100 Stat. 4183) is amended—

(1) by striking out “in this Act, or an amendment made by this Act, for a project” and inserting in lieu thereof “with respect to a project for water resources development and conservation and related purposes authorized to be carried out by the Secretary in this Act or in a law enacted after the date of the enactment of this Act, including the Water Resources Development Act of 1988, or in an amendment made by this Act or any later law with respect to such a project”;

(2) in paragraph (1) by inserting “, in any later law,” after “in this Act” and by inserting “or any later law” after “by this Act”;

(3) in paragraph (2)(A) by inserting “or any later law” after “of this Act”; and

(4) in paragraph (2)(B) by inserting “or any later law” after “by this Act”.

EC. 4. PROJECT MODIFICATIONS.

(a) BEAVER LAKE, ARKANSAS.—

(1) AMENDMENTS.—Section 843 of the Water Resources Development Act of 1986 (100 Stat. 4176–4177) is amended—

(A) by inserting “and the Chief of the Soil Conservation Service,” after “the Environmental Protection Agency”; and

(B) by inserting “including best management practices,” before “at a total cost”.

(2) CONTINUATION OF PLANNING AND DESIGN.—Using funds made available for the Beaver Lake project, Arkansas, pursuant to the Energy and Water Development Appropriations Act, 1989, the Secretary is directed to continue overall planning and design for such project, including the development of implementation plans for individual parcels of land within the drainage basin which contribute to water quality degradation and impairment of water supply uses at Beaver Lake.

(b) WEST MEMPHIS AND VICINITY, ARKANSAS.—The project for flood control, West Memphis and vicinity, Arkansas, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4112) is modified to provide that non-Federal cooperation for such project may be provided by levee districts, drainage districts, or any unit of a State, county, or local government.

Flood control.

(c) KING HARBOR, REDONDO BEACH, CALIFORNIA.—Section 809 of the Water Resources Development Act of 1986 (100 Stat. 4168) is amended by striking out the last sentence and inserting in lieu thereof the following: “The non-Federal share of the cost of work undertaken pursuant to this section shall be in accordance with title of this Act.”

(d) LOS ANGELES AND LONG BEACH HARBORS, SAN PEDRO BAY, CALIFORNIA.—The navigation project for Los Angeles and Long Beach Harbors, San Pedro Bay, California, authorized by section 201 of the Water Resources Development Act of 1986 (100 Stat. 4091), is modified to provide that, if non-Federal interests carry out any work associated with such project which is later recommended by the Chief of Engineers and approved by the Secretary, the Secretary may credit such non-Federal interests an amount equal to the Federal share of the cost of such work, without interest. In analyzing costs and benefits of such project, the Secretary shall consider the costs and benefits produced by any work which is carried out under the preceding sentence by non-Federal interests and which the Secretary determines is compatible with such project. The fea-

Reports.

sibility report for such project shall include consideration and evaluation of the following proposed project features: Long Beach Main Channel, Channel to Los Angeles Pier 300, Channels to Los Angeles Pier 400, Long Beach Pier "K" Channel, and Los Angeles Crude Transshipment Terminal Channel.

(e) LOS ANGELES RIVER, CALIFORNIA.—The Secretary is directed to perform maintenance dredging of the existing Federal project at the mouth of the Los Angeles River, California, to the authorized depth of 20 feet for the purpose of maintaining the flood control basin and navigation safety.

(f) SUNSET HARBOR, CALIFORNIA.—The demonstration project at Sunset Harbor, California, authorized by section 1119(b) of the Water Resources Development Act of 1986 (100 Stat. 4238), is modified to include wetland restoration as a purpose of such demonstration project. All costs allocated to such wetland restoration shall be paid by non-Federal interests in accordance with section 916 of such Act.

(g) INDIANA SHORELINE EROSION, INDIANA.—The undesignated paragraph of section 501(a) of the Water Resources Development Act of 1986 under the heading "INDIANA SHORELINE, INDIANA" (100 Stat. 4135) is amended by striking out "with an estimated first Federal cost of \$15,000,000 and an estimated first non-Federal cost of \$5,000,000." and inserting in lieu thereof "with the Federal share of the cost of this project to be determined in accordance with title I of this Act."

and fishing.
life.

(h) STUMPY LAKE, LOUISIANA.—The project for mitigation of fish and wildlife losses Red River Waterway, Louisiana, authorized by section 601(a) of the Water Resources Development Act of 1986 (100 Stat. 4142), is modified to authorize the Secretary to obtain, on a priority basis, up to 300 acres in the area of Stumpy Lake as part of such project. Such modification shall not increase the total authorization for land acquisition for such project.

(i) ANNAPOLIS HARBOR, MARYLAND.—The project for navigation, Annapolis Harbor, Maryland, is modified to authorize and direct the Secretary to realign by nonstructural, nondredging measures the channel in such project, as determined necessary by the Secretary, for the purpose of promoting more efficient mooring operations in Annapolis Harbor.

(j) DEAL ISLAND, MARYLAND.—The Secretary may pay the remaining cost for the navigation project for Deal Island, Maryland (Lower Thorofare), authorized under section 107 of the River and Harbor Act of 1960, estimated at \$277,000, plus any interest due the construction contractor.

(k) REDWOOD RIVER, MARSHALL, MINNESOTA.—The project for flood control, Redwood River, Marshall, Minnesota, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4117), is modified to authorize the Secretary to construct the project substantially in accordance with the General Design Memorandum, dated April 1987, at a total cost of \$6,900,000, with an estimated first Federal cost of \$5,000,000 and an estimated first non-Federal cost of \$1,900,000.

(l) ROOT RIVER BASIN, MINNESOTA.—The undesignated paragraph of section 401(a) of the Water Resources Development Act of 1986 under the heading "ROOT RIVER BASIN, MINNESOTA" (100 Stat. 4117) is amended by adding at the end thereof the following new sentence: "Nothing in this paragraph precludes the Secretary from carrying

ut the project under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s).”

(m) **ROSEAU RIVER, MINNESOTA.**—The project for flood control, Roseau River, Minnesota, authorized by the Flood Control Act of 1965, is modified to authorize and direct the Secretary to construct as authorized, or to construct under section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), the 6-mile flood control levee in the vicinity of Duxby, Minnesota, beginning at a point approximately 1.5 miles upstream, substantially in accordance with the recommendations of the Chief of Engineers contained in House Document Numbered 282, 89th Congress, at an estimated total cost of \$360,000, and with an estimated first Federal cost of \$270,000 and an estimated first non-Federal cost of \$90,000. In analyzing costs and benefits of such project, the Secretary shall consider the costs and benefits produced by any work which is carried out under such section 205 and which the Secretary determines is compatible with such project.

(n) **GULFPORT HARBOR, MISSISSIPPI.**—

Waste disposal.

(1) **IN GENERAL.**—The project for navigation, Gulfport Harbor, Mississippi, authorized by section 202(a) of the Water Resources Development Act of 1986 (100 Stat. 4094-4095) is modified to authorize the Secretary to dispose, in accordance with all provisions of Federal law, of dredged material—

(A) from construction, operation, and maintenance of such project in open waters of the Gulf of Mexico;

(B) from construction of such project by thin layer disposal in the Mississippi Sound under the demonstration program carried out under paragraph (2);

(C) from operation and maintenance of such project by disposal in the Mississippi Sound under a plan developed by the Secretary and approved by the Administrator of the Environmental Protection Agency if the Secretary, after consultation with the study team established under paragraph (3), determines that the report submitted under paragraph (2)(H) indicates that there will be no unacceptable adverse environmental impacts from such disposal; and

(D) from construction, operation, and maintenance of such project as fill in connection with a pier extension project for such Harbor carried out under a permit issued before, on, or after the date of the enactment of this Act under section 404 of the Federal Water Pollution Control Act.

(2) **DEMONSTRATION PROGRAM.**—

(A) **PURPOSES.**—During construction of the Gulfport Harbor navigation project, the Secretary shall carry out a demonstration program for the purpose of evaluating the costs and benefits of thin layer disposal in the Mississippi Sound of dredged material from construction of harbor improvements, including any operation and maintenance materials that may be removed during construction, and for determining whether or not there are unacceptable adverse effects from such disposal—

(i) on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

(ii) on marine life (including the transfer, concentration, and dispersal of pollutants or their byproducts

through biological, physical, and chemical processes), changes in marine ecosystem diversity, productivity, and stability, and species and community population changes;

(iii) on esthetic, recreation, and economic values; and

(iv) on alternative uses of oceans, such as mineral exploitation and scientific study.

In addition, the Secretary shall determine through such program the persistence and permanence of any such adverse effects and methods of mitigating any such adverse effects.

(B) **PLANNING.**—Within 4 months after the date of the enactment of the Act, the Secretary, in consultation with the study team established under paragraph (3), shall develop a plan for carrying out the demonstration program under this paragraph. Such plan shall, at a minimum, establish predisposal monitoring requirements, thin layer disposal locations, the amounts of dredged material necessary for carrying out such demonstration program, the duration of thin layer disposal under such demonstration program, the compatibility of the receiving habitat with thin layer dredged material disposal, requirements for minimizing demonstration program impacts, the depth of thin layer disposal, and the scope of the post disposal monitoring.

(C) **LIMITATIONS ON MATERIALS FROM PROJECT.**—The Secretary in carrying out the demonstration program under this paragraph shall use suitable material removed during construction of the Gulfport Harbor navigation project. The amount of material used shall be of sufficient quantity to determine the effects of thin layer disposal in near shore areas of (i) dredged materials from construction of harbor improvements, and (ii) any materials from operation and maintenance of harbor improvements dredged during the period of such construction; except that the total amount of material to be used shall be limited to the lesser of 3,000,000 cubic yards of dredged material or the amount determined under the plan developed under subparagraph (B).

(D) **CONSULTATION REQUIREMENT.**—In conducting the demonstration program under this paragraph, the Secretary shall consult the study team established under paragraph (3).

(E) **POST DISPOSAL MONITORING.**—The demonstration program under this paragraph shall include monitoring of the near shore areas at which dredged material is disposed of under such program during the period determined under the plan developed under subparagraph (B).

(F) **APPLICABILITY OF FEDERAL LAW.**—The demonstration program under this paragraph shall be carried out in accordance with all applicable provisions of Federal law, including section 404(c) of the Federal Water Pollution Control Act.

(G) **COST SHARING.**—The demonstration program carried out under this paragraph shall be subject to cost sharing under title I of the Water Resources Development Act of 1986. All costs of such program, other than dredging and disposal of dredged material costs, shall not be included for

purposes of calculating the economic costs and benefits of the navigation project for Gulfport Harbor, Mississippi.

(H) REPORT TO CONGRESS AND EPA.—Within 1 year after the date of completion of the demonstration program under this paragraph, the Secretary, after consultation with the study team established under paragraph (3), shall transmit to Congress and to the Administrator of the Environmental Protection Agency a report on the results of such demonstration program together with recommendations concerning thin layer disposal in near shore areas of dredged material from construction, operation, and maintenance of future navigation projects.

(I) APPROVAL OR DISAPPROVAL OF RECOMMENDATIONS.—Not later than 30 days after the date of receipt of the report and recommendations under subparagraph (H), the Administrator of the Environmental Protection Agency shall approve or disapprove the recommendations and shall notify Congress and the Secretary of such approval or disapproval. If the Administrator disapproves the recommendations, not later than 30 days after the date of such disapproval, the Administrator shall notify Congress and the Secretary of the reasons for such disapproval together with recommendations for modifications which could be made to the recommendations to take into account such reasons. If the Administrator fails to approve or disapprove the recommendations transmitted under subparagraph (H) within the 30-day period, the recommendations shall be deemed to be approved.

(3) STUDY TEAM.—The Secretary shall establish a study team to assist the Secretary in planning, carrying out, monitoring, and reporting on the demonstration program and the results of such program under this subsection. Such team shall be appointed by the Secretary and shall consist of representatives of the Corps of Engineers, the Environmental Protection Agency, interested Federal and State resource agencies, and the local sponsor of the demonstration program. Members of the study team who are not officers or employees of the United States shall serve without compensation. Members of the study team who are officers or employees of the United States shall receive no additional pay by reason of their service on the study team.

(4) THIN LAYER DISPOSAL DEFINED.—For purposes of this subsection, the term "thin layer disposal" means the deliberate placement of a 6- to 12-inch layer of dredged material in a specific bottom area. In no case shall such layer exceed a maximum of 12 inches of thickness.

(o) BRUSH CREEK AND TRIBUTARIES, MISSOURI AND KANSAS.—The project for flood control, Brush Creek and tributaries, Missouri and Kansas, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 4118), is modified to authorize the Secretary to provide to the non-Federal interests providing local cooperation for such project services (including the provision of services by contract) in the design and construction of upstream and downstream non-Federal extensions to such project—

Flood control.

(1) if the non-Federal interests provide, in advance of obligation of Federal funds for such design and construction, amounts sufficient to cover all costs of such services;

(2) if, prior to construction of such extensions, the non-Federal interests obtain all necessary Federal and State permits; and

(3) if the non-Federal interests agree to hold and save the United States free from damages due to the planning, design, construction, operation, or maintenance of such extensions. Construction costs, operation, and maintenance of such extensions shall be a non-Federal responsibility and shall not be considered part of the Brush Creek flood control project for any purpose.

Indians.
Historic
preservation.

(p) **LIBBY DAM, MONTANA.**—The project for Libby Dam, Lake Koocanusa Reservoir, Montana, is modified (1) to authorize the Secretary, in consultation with the Secretary of Agriculture, to undertake measures to alleviate low water impact on existing facilities at such project, including provision of low water access to Lake Koocanusa, Montana, and provision of additional planned public recreation sites along the reservoir, and (2) to direct the Secretary to protect Indian archaeological sites which are exposed during the course of operations of such project, at an estimated total cost of \$750,000. The Secretary shall coordinate with the Kootenai Tribes in monitoring exposed archaeological sites to prevent pillaging, in preserving artifacts onsite, and in facilitating curation at the tribal curation center in Pablo Montana when onsite preservation is not warranted.

(q) **SEA BRIGHT TO MONMOUTH BEACH, NEW JERSEY.**—Section 854 of the Water Resources Development Act of 1986 (100 Stat. 4179-4180) is amended to read as follows:

“SEC. 854. **SANDY HOOK TO BARNEGAT INLET, NEW JERSEY.**

“(a) Subject to section 903(a) of this Act, the project for beach erosion control, Sandy Hook to Barnegat Inlet, New Jersey, authorized by the River and Harbor Act of 1958, is modified to provide that the first Federal construction increment of the Ocean Township to Sandy Hook reach of such project shall consist of a berm of approximately 100 feet at Sea Bright and Monmouth Beach extending to and including a feeder beach in the vicinity of Long Beach substantially in accordance with the plan recommended in the draft General Design Memorandum entitled ‘Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet, Beach Erosion Control Project, Section 1—Sea Bright to Ocean Township, New Jersey’, dated May 1988, at a total initial cost for such increment of \$91,000,000 and an annual cost of \$1,200,000 for periodic beach nourishment over the life of such increment.

“(b) The non-Federal share of the costs of construction and maintenance of the increment referred to in subsection (a) shall be—

“(1) for the first \$40,000,000 in costs, the amounts expended by non-Federal interests for reconstruction of the seawall at Sea Bright and Monmouth Beach, New Jersey; and

“(2) for costs in excess of \$40,000,000, a non-Federal share which is in accordance with title I of this Act.

“(c) Before initiation of construction of any increment of the project for beach erosion control, Sandy Hook to Barnegat Inlet, New Jersey, non-Federal interests shall agree to provide public access to the beach for which such increment of the project is authorized in accordance with all requirements of State law and regulations.”.

Flood control.
Dams.

(r) **WYOMING VALLEY, PENNSYLVANIA.**—The project for flood control, Wyoming Valley, Pennsylvania, authorized by section 401(a) of the Water Resources Development Act of 1986 (100 Stat. 1424), is

ified to authorize the Secretary to study the feasibility of constructing an inflatable dam on the Susquehanna River in the vicinity of Wilkes Barre, Pennsylvania.

(C) **BLAIR AND SITCUM WATERWAYS, WASHINGTON.**—The undesigned paragraph of section 202(a) of the Water Resources Development Act of 1986 under the heading “BLAIR AND SITCUM WATERWAYS, KOMA HARBOR, WASHINGTON” (100 Stat. 4096) is amended by striking out “\$38,200,000” and all that follows through “\$12,000,000;” inserting in lieu thereof “\$51,000,000;”.

(D) **WYNOOCHEE LAKE, WASHINGTON.**—

(1) **IN GENERAL.**—To demonstrate the feasibility of non-Federal operation, maintenance, repair, and rehabilitation of a Federal multi-purpose water resources project, the project for Wynoochee Lake, Wynoochee River, Washington, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1193), is modified to authorize the Secretary to permit the city of Aberdeen, Washington, to operate, maintain, repair, and rehabilitate the project (hereinafter in this subsection referred to as “OMR&R”) after September 30, 1988.

(2) **LIMITATIONS ON OMR&R.**—OMR&R by the city of Aberdeen shall be—

(A) subject to such terms and conditions as the Secretary shall establish by regulation to ensure that OMR&R is consistent with the project's authorized purposes, including fish and wildlife mitigation; and

(B) consistent with the long-term value and viability of the project's physical facilities.

In issuing such regulations, the Secretary shall evaluate the effect of such regulations on the project costs payable by the city.

(3) **CONDITIONS.**—OMR&R by the city of Aberdeen under this subsection shall be subject to the following conditions:

(A) Title to real and personal property of the project shall remain in the United States, and the city shall not impair such title.

(B) The city shall hold and save the United States free from any damages which result from OMR&R by the city, except for damages due to the fault or negligence of the United States or its contractors.

(C) Upon due cause as determined by the Secretary and after notice to the city, the Secretary may resume OMR&R and the city shall be responsible to pay the percentage of the OMR&R costs of the project incurred thereafter and related to water supply storage as described in the original project contract.

(D) The Secretary shall modify the project contract to forgive future OMR&R payment obligations of the city to the extent that the city is performing project OMR&R in accordance with this subsection and the regulations issued under this subsection.

(E) The Secretary shall transfer to the city responsibility for OMR&R of the project in a safe and cost-effective manner.

(4) **REPORT TO CONGRESS.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall transmit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the

Regulations.

Real property.
Gifts and
property.

House of Representatives a report on the implementation of this subsection.

33 USC 2312.

SEC. 5. COMMENTS ON CERTAIN CHANGES IN OPERATIONS OF RESERVOIRS.

Before the Secretary may make changes in the operation of any reservoir which will result in or require a reallocation of storage space in such reservoir or will significantly affect any project purpose, the Secretary shall provide an opportunity for public review and comment.

SEC. 6. OPERATION OF CERTAIN PROJECTS TO ENHANCE RECREATION.

(a) **ENHANCEMENT OF RECREATION.**—The Secretary shall ensure, to the extent compatible with other project purposes, that each water resources project referred to in this subsection is operated in such manner as will protect and enhance recreation associated with such project. The Secretary is authorized to manage project lands at each such project in such manner as will improve opportunities for recreation at the project. Such activities shall be included as authorized project purposes of each project. Nothing in this subsection shall be construed to affect the authority or discretion of the Secretary with respect to carrying out other authorized project purposes or to comply with other requirements or obligations of the Secretary which are legally binding as of the date of the enactment of this Act. The provisions of this subsection shall apply to the following projects:

- (1) Beechfork Lake, West Virginia.
- (2) Bluestone Lake, West Virginia.
- (3) East Lynn Lake, West Virginia.
- (4) Francis E. Walter Dam, Pennsylvania.
- (5) Jennings Randolph Lake (Bloomington Dam), Maryland and West Virginia.
- (6) R.D. Bailey Lake, West Virginia.
- (7) Savage River Dam, Maryland.
- (8) Youghiogheny River Lake, Pennsylvania and Maryland.
- (9) Summersville Lake, West Virginia.
- (10) Sutton Lake, West Virginia.
- (11) Stonewall Jackson Lake, West Virginia.

(b) **RECREATION DEFINED.**—As used in this section, in addition to recreation on lands associated with the project, the term “recreation” includes (but shall not be limited to) downstream whitewater recreation which is dependent on project operations, recreational fishing, and boating on water at the project.

33 USC 2313.

SEC. 7. COLLABORATIVE RESEARCH AND DEVELOPMENT.

(a) **IN GENERAL.**—For the purpose of improving the state of engineering and construction in the United States and consistent with the mission of the Army Corps of Engineers, the Secretary is authorized to utilize Army Corps of Engineers laboratories and research centers to undertake, on a cost-shared basis, collaborative research and development with non-Federal entities, including State and local government, colleges and universities, and corporations, partnerships, sole proprietorships, and trade associations which are incorporated or established under the laws of any of the several States of the United States or the District of Columbia.

(b) **ADMINISTRATIVE PROVISIONS.**—In carrying out this section, the Secretary may consider the recommendations of a non-Federal

State listing.

Contracts.

y in identifying appropriate research or development projects may enter into a cooperative research and development agreement, as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a); except that in such agreement, the Secretary may agree to provide not more than 50 percent of the cost of any research or development project selected by the Secretary under this section. Not less than 5 percent of the non-Federal entity's share of the cost of any such project shall be paid in

APPLICABILITY OF OTHER LAWS.—The research, development, or demonstration of any technology pursuant to an agreement under section (b), including the terms under which such technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701-3714).

AUTHORIZATION OF APPROPRIATIONS.—To carry out the purposes of this section, there is authorized to be appropriated to the Secretary of the Army civil works funds \$3,000,000 for fiscal year 1989, \$4,000,000 for fiscal year 1990, \$5,000,000 for fiscal year 1991, and \$6,000,000 for each fiscal year thereafter.

ADDITIONAL FUNDING.—Notwithstanding the third proviso under the heading "GENERAL INVESTIGATIONS" of title I of the Energy and Water Development Appropriations Act, 1989 (102 Stat. 1241), an additional \$3,000,000 of the funds appropriated under such Act shall be available to the Secretary for obligation to carry out the purposes of this section in fiscal year 1989.

3. INNOVATIVE TECHNOLOGY.

33 USC 2314.

USE.—The Secretary shall, whenever feasible, seek to promote energy conservation and short-term cost savings, increased efficiency, reliability, safety, and improved environmental results through the use of innovative technology in all phases of water resources development projects and programs under the Secretary's jurisdiction. To further this goal, Congress encourages the Secretary to—

- (1) use procurement and contracting procedures that encourage innovative project design, construction, rehabilitation, repair, and operation and maintenance technologies;
- (2) frequently review technical and design criteria to remove or modify unnecessary impediments to innovation;
- (3) increase timely exchange of technical information with universities, private companies, government agencies, and individuals;
- (4) foster design competition; and
- (5) encourage greater participation by non-Federal project sponsors in the development and implementation of projects.

REPORTS.—Within 2 years after the date of the enactment of this Act, and thereafter at the Secretary's discretion, the Secretary shall provide Congress with a report on the results of, and recommendations to increase, the development and use of innovative technology in water resources development projects under the Secretary's jurisdiction. Such report shall also contain information regarding innovative technologies which the Secretary has considered and rejected for use in water resources development projects under the Secretary's jurisdiction.

INNOVATIVE TECHNOLOGY DEFINED.—For the purpose of this section, the term "innovative technology" means designs, materials,

or methods which the Secretary determines are previously undemonstrated or are too new to be considered standard practice.

33 USC 2314
note.

SEC. 9. TECHNICAL ASSISTANCE DEMONSTRATION PROGRAM.

(a) **IN GENERAL.**—The Secretary is authorized to undertake a demonstration program for a 2-year period, which shall begin within 6 months after the date of the enactment of this Act, to provide technical assistance, on a nonexclusive basis, to any United States firm which is competing for, or has been awarded, a contract for the planning, design, or construction of a project outside the United States, if the United States firm provides, in advance of fiscal obligation by the United States, funds to cover all costs of such assistance. In determining whether to provide such assistance, the Secretary shall consider the effects on the Department of the Army civil works mission, personnel, and facilities. Prior to the Secretary providing such assistance, a United States firm must—

(1) certify to the Secretary that such assistance is not otherwise reasonably and expeditiously available; and

(2) agree to hold and save the United States free from damages due to the planning, design, construction, operation, or maintenance of the project.

(b) **FEDERAL EMPLOYEES' INVENTIONS.**—As to an invention made or conceived by a Federal employee while providing assistance pursuant to this section, if the Secretary decides not to retain all rights in such invention, the Secretary may—

Patents and
trademarks.

(1) grant or agree to grant in advance, to a United States firm, a patent license or assignment, or an option thereto, retaining a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the United States and such other rights as the Secretary deems appropriate; or

(2) waive, subject to reservation by the United States of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the United States, in advance, in whole, or in part, any right which the United States may have to such invention.

(c) **PROTECTION OF CONFIDENTIAL INFORMATION.**—Information of a confidential nature, such as proprietary or classified information, provided to a United States firm pursuant to this section shall be protected. Such information may be released by a United States firm only after written approval by the Secretary.

(d) **REPORT.**—Within 6 months after the end of the demonstration program authorized by this section, the Secretary shall submit to Congress a report on the results of such demonstration program.

(e) **DEFINITIONS.**—For purposes of this section—

(1) **UNITED STATES FIRM.**—The term “United States firm” means a corporation, partnership, limited partnership, or sole proprietorship that is incorporated or established under the laws of any of the United States with its principal place of business in the United States.

(2) **UNITED STATES.**—The term “United States”, when used in a geographical sense, means the several States of the United States and the District of Columbia.

33 USC 2315.

SEC. 10. PERIODIC STATEMENTS.

Upon receipt of a request from a non-Federal sponsor of a water resources development project under construction by the Secretary,

Secretary shall provide such sponsor with periodic statements of project expenditures. Such statements shall include an estimate of Federal and non-Federal funds expended by the Secretary, including overhead expenditures, the purpose for expenditures, and schedule of anticipated expenditures during the remaining period of construction. Statements shall be provided to the sponsor at intervals of no greater than 6 months.

C. 11. SIMULATION MODEL OF SOUTH CENTRAL FLORIDA HYDROLOGIC ECOSYSTEM.

(a) IN GENERAL.—The Secretary, in cooperation with affected Federal, State, and local agencies and other interested persons, may develop and operate a simulation model of the central and southern Florida hydrologic ecosystem for use in predicting the effects—

Flood control.

(1) of modifications to the flood control project for central and southern Florida, authorized by the Flood Control Act of 1948,

(2) of changes in the operation of such project, and

(3) of other human activities conducted in the vicinity of such ecosystem which individually or in the aggregate will significantly affect the ecology of such ecosystem,

the flow, characteristics, quality, and quantity of surface and ground water in such ecosystem and on plants and wildlife within such ecosystem. Such model shall be capable of producing information which is applicable for use in evaluating the impact of issuance of proposed permits under section 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403), commonly known as the River and Harbors Appropriation Act of 1899, and under section 404 of the Federal Water Pollution Control Act.

(b) AVAILABILITY TO STATE AND LOCAL AGENCIES.—The Secretary shall allow Federal, State, and local agencies to use, on a reimbursement basis, the simulation model developed under this section.

(c) COST SHARING.—The Federal share of the cost of developing and operating the simulation model under this section shall be 75 percent.

C. 12. SECTION 215 REIMBURSEMENT LIMITATION PER PROJECT.

Section 215(a) of the Flood Control Act of 1968 (42 U.S.C. 1962d-1(a)) is amended by inserting after “\$3,000,000” the following: “or 1 percent of the total project cost, whichever is greater; except that the amount of actual Federal reimbursement, including reductions in contributions, for such project may not exceed \$5,000,000 in any calendar year.”.

C. 13. ADDITIONAL 10 PERCENT PAYMENT OVER 30 YEARS FOR CONSTRUCTION OF HARBORS.

(a) RELOCATION COSTS.—Section 101(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2211(a)) is amended by striking that paragraph (2) and inserting in lieu thereof the following new paragraph:

“(2) **ADDITIONAL 10 PERCENT PAYMENT OVER 30 YEARS.**—The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, at an interest rate determined pursuant to section 106. The value of lands, easements, rights-of-way, relocations, and dredged material disposal areas provided under paragraph (3) and the costs of relocations borne by the non-

Federal interests under paragraph (4) shall be credited toward the payment required under this paragraph.”

33 USC 2211
note.

(b) **RETROACTIVE EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on November 17, 1986.

SEC. 14. COMPLIANCE WITH FLOOD PLAIN MANAGEMENT AND INSURANCE PROGRAMS.

Section 402 of the Water Resources Development Act of 1986 (33 U.S.C. 701b-12) is amended by inserting “or any project for hurricane or storm damage reduction” after “local flood protection”.

SEC. 15. FEDERAL REPAYMENT DISTRICT.

Section 916(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2291) is amended by striking out “include the power to collect” and all that follows through the period at the end of the last sentence and inserting in lieu thereof “have the power to recover benefits through any cost-recovery approach that is consistent with State law and satisfies the applicable cost-recovery requirement under subsection (b).”.

SEC. 16. ABANDONED AND WRECKED VESSELS.

Section 1115 of the Water Resources Development Act of 1986 (100 Stat. 4235) is amended by striking out the last period and inserting in lieu thereof the following: “: *Provided*, That, in furtherance of the work authorized by paragraph (3) hereof, and conditioned on successful removal of the A. Regina, the Secretary of the Army is hereby authorized to transfer upon such conditions as he shall deem fit the title to a Delong Pier Jack-Up Barge Type A, serial number BPA6814, directly to any entity, including any private corporation to be used to assist in the removal of the wreck of the said A. Regina. Procedures otherwise governing the disposal of government property, shall not apply to the above authorized transfer of title. The foregoing actions shall be at no cost to the United States, and shall constitute full compliance by the Secretary of the Army with the requirement of paragraph (3) hereof.”.

SEC. 17. FLOOD WARNING AND RESPONSE SYSTEM.

Pennsylvania.

(a) **PROJECT.**—The Secretary, in cooperation with other Federal agencies and the Susquehanna River Basin Commission, is authorized to design and implement a comprehensive flood warning and response system to serve communities and flood prone areas along Juniata River and tributaries in the State of Pennsylvania consistent with the cost sharing policies of the Water Resources Development Act of 1986.

(b) **AUTHORIZATION OF APPROPRIATION.**—There is authorized to be appropriated to carry out this section \$2,000,000 for fiscal years beginning after September 30, 1988.

SEC. 18. SMALL BOAT HARBOR, BUFFALO HARBOR, NEW YORK.

The Secretary may undertake such emergency repairs as the Secretary determines necessary to preserve the existing dike at the Small Boat Harbor, Buffalo Harbor, New York, at a total cost of \$2,000,000, except that the Federal share may not exceed \$1,000,000.

SEC. 19. LAKEPORT LAKE, CALIFORNIA.

(a) **PROJECT REAUTHORIZATION.**—Subject to section 1001(a) of the Water Resources Development Act of 1986, the project for flood control, Lakeport Lake, California, as authorized by the Flood Con-

Act of 1965 on the day before the date of the enactment of the Water Resources Development Act of 1986, is authorized.

(b) **REPEAL OF DEAUTHORIZATION.**—Section 1003 of the Water Resources Development Act of 1986 (100 Stat. 4222–4223) is repealed.

20. SACRAMENTO, CALIFORNIA.

The President, in submitting his budget for fiscal year 1990, shall include a schedule for completing the feasibility study on Northern California Streams, American River Watershed, as expeditiously as practicable and an estimate of the resources required to meet such schedule.

President of U.S.

21. MISSISSIPPI RIVER HEADWATERS RESERVOIRS.

(a) **GENERAL RULE.**—Notwithstanding any other provision of law, the Secretary is directed to maintain water levels in the Mississippi River headwaters reservoirs within the following operating limits: Annibegoshish 1296.94 feet—1303.14 feet; Leech 1293.20 feet—1277.94 feet; Pokegama 1270.42 feet—1276.42 feet; Sandy 1214.31 feet—1218.31 feet; Pine 1227.32 feet—1234.82 feet; and Gull 1192.75 feet—1194.75 feet. Such water levels shall be measured using the National Geodetic Vertical Datum.

(b) **EXCEPTION.**—The Secretary may operate the headwaters reservoirs below the minimum or above the maximum water levels established in subsection (a) in accordance with a contingency plan which the Secretary develops after consulting with the Governor of Minnesota and affected landowners and commercial and recreational users. The Secretary shall transmit such plan to Congress within 6 months after the date of the enactment of this Act. The Secretary shall report to Congress at least 14 days prior to operating any such headwaters reservoir below the minimum or above the maximum water level limits specified in subsection (a).

Reports.

22. HEARDING ISLAND INLET, DULUTH HARBOR, MINNESOTA.

The Secretary is authorized to dredge the Hearing Island Inlet, Duluth Harbor, Minnesota, for the purpose of increasing water circulation and reducing stagnant water conditions, at a total cost of \$10,000.

23. LOUISIANA WATER SUPPLY.

The Secretary is directed to review periodically the water supply problems related to drought which may be experienced at the Bayou Fourche water supply reservoir in Louisiana and to respond as appropriate under the authority granted by section 5 of the Act entitled “An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes”, approved August 18, 1941 (55 Stat. 650; 33 U.S.C. 701n).

24. CONTAINED SPOIL DISPOSAL FACILITIES IN THE GREAT LAKES AND THEIR CONNECTING CHANNELS.

(a) **PERIOD FOR DEPOSITING DREDGED MATERIALS.**—Section 123 of the River and Harbor Act of 1970 (33 U.S.C. 1293a) is amended by adding at the end thereof the following new subsection:

(j) **PERIOD FOR DEPOSITING DREDGED MATERIALS.**—The Secretary, through the Army, acting through the Chief of Engineers, is authorized to continue to deposit dredged materials into a contained spoil disposal facility constructed under this section until the Secretary determines that such facility is no longer needed for such purpose or that such facility is completely full.”

(b) **STUDY AND MONITORING PROGRAM.**—Such section is further amended by adding at the end thereof the following new subsection:

“(k) **STUDY AND MONITORING PROGRAM.**—

“(1) **STUDY.**—The Secretary of the Army, acting through the Chief of Engineers, shall conduct a study of the materials disposed of in contained spoil disposal facilities constructed under this section for the purpose of determining whether or not toxic pollutants are present in such facilities and for the purpose of determining the concentration levels of each of such pollutants in such facilities.

“(2) **REPORT.**—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall transmit to Congress a report on the results of the study conducted under paragraph (1).

“(3) **INSPECTION AND MONITORING PROGRAM.**—The Secretary shall conduct a program to inspect and monitor contained spoil disposal facilities constructed under this section for the purpose of determining whether or not toxic pollutants are leaking from such facilities.

“(4) **TOXIC POLLUTANT DEFINED.**—For purposes of this subsection, the term ‘toxic pollutant’ means those toxic pollutants referred to in sections 301(b)(2)(C) and 301(b)(2)(D) of the Federal Water Pollution Control Act and such other pollutants as the Secretary, in consultation with the Administrator of the Environmental Protection Agency, determines are appropriate based on their effects on human health and the environment.”.

SEC. 25. SOUTH PIER TO CHARLEVOIX HARBOR, CHARLEVOIX, MICHIGAN.

Hazardous materials.
Pollution.

The Secretary shall take such action as may be necessary to restore recreational uses established prior to May 1, 1988, or provide comparable recreational uses at the South Pier to Charlevoix Harbor project, Charlevoix, Michigan, in order to mitigate any adverse impact on recreational uses resulting from reconstruction of the South Pier. Costs incurred by the Secretary to carry out this section shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures and shall be subject to cost sharing or reimbursement to the same extent as other project costs are shared or reimbursed.

SEC. 26. COYOTE AND BERRYESSA CREEKS, CALIFORNIA.

Recreation.

The Secretary is directed to include in the feasibility report for the project for flood control, Coyote and Berryessa Creeks, California: Report of the Board of Engineers for Rivers and Harbors, dated May 11, 1988, recommendations for reimbursement of local interests for work undertaken after the date of the enactment of this Act which is integral to the Federal project as recommended in the feasibility study. Such reimbursement shall not exceed \$3,000,000 and shall be made at such time as the federally funded work is carried out.

Reports.
Flood control.

SEC. 27. LAND CONVEYANCE, WHITTIER NARROWS DAM, LOS ANGELES COUNTY, CALIFORNIA.

(a) **AUTHORITY TO CONVEY.**—Subject to the provisions of this subsection, the Secretary may convey to the city of South El Monte, California, approximately 7.778 acres of real property, together with improvements thereon, located within the Whittier Narrows Flood

Real property.

ntrol Basin, south of the Pomona Freeway (Highway 60) and east Santa Anita Avenue, in the city of South El Monte, California.

b) **CONSIDERATION.**—In consideration for the conveyance authorized by subsection (a), the Secretary may accept real property in the Los Angeles area or cash, or both. The value of the consideration for the conveyance may not be less than the fair market value of the property conveyed by the United States, as determined by the Secretary. Any funds received by the Secretary under this section shall be deposited into the general fund of the Treasury.

c) **CONDITIONS.**—The Secretary may make the conveyance described in subsection (a) only if—

(1) the city of South El Monte, California, grants the United States a perpetual easement that enables the Federal Government to carry out necessary flood control activities with respect to such real property;

(2) such city agrees to use suitable property located directly adjacent to the Whittier Narrows Park, which will be acquired by such city through an exchange for such real property, for parking in connection with recreational activities in the Whittier Narrows Recreational Area, as the Secretary considers appropriate; and

(3) the Secretary determines that the Secretary does not need fee simple title to such real property for operation of the project.

d) **ADDITIONAL TERMS.**—The Secretary may impose such additional terms and conditions on the conveyance authorized by subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

e) **LEGAL DESCRIPTION OF REAL PROPERTY.**—The exact acreage and legal description of the real property described in subsection (a) shall be determined by a survey which is satisfactory to the Secretary. The cost of such survey shall be borne by the city of South El Monte, California.

C. 28. LAND CONVEYANCE, OTTAWA, ILLINOIS.

(a) **IN GENERAL.**—Subject to the provisions of this section, the Secretary shall convey to the city of Ottawa, Illinois, by quitclaim deed any right, title, and interest of the United States to approximately 5.3 acres of land located at the junction of the Fox and Illinois Rivers in such city.

(b) **TERMS AND CONDITIONS.**—The conveyance by the United States under this section shall be subject to the condition that the city of Ottawa, Illinois, its successors and assigns, agrees to hold the United States harmless from all claims arising from or through the operations of the lands conveyed by the United States. The Secretary may impose such additional terms and conditions on the conveyance as the Secretary considers appropriate to protect the interests of the United States; except that the Secretary may not impose any term or condition which restricts the use of the lands conveyed by the United States under this section.

(c) **LEGAL DESCRIPTION OF REAL PROPERTY.**—The exact acreage and legal description of the real property described in subsection (a) shall be determined by a survey which is satisfactory to the Secretary. The cost of the survey shall be borne by the city of Ottawa, Illinois.

Gifts and
property.

Flood control.

Claims.

SEC. 29. LAND TRANSFER IN WHITMAN COUNTY, WASHINGTON.

life.

(a) **EXCHANGE OF LAND.**—The Secretary shall exchange approximately 171 acres of land acquired by the United States for the Lower Granite Lock and Dam project, Washington, authorized as part of the navigation project for the Snake River, Oregon, Washington, and Idaho by section 2 of the River and Harbor Act of March 2, 1945 (59 Stat. 21), for a tract of land owned by the Port of Whitman County, Washington, which the Secretary determines is suitable for wildlife mitigation purposes. Such exchange shall be made with regard to the values of the lands being exchanged.

(b) **TERMS AND CONDITIONS.**—The land of the United States exchanged under subsection (a) shall be subject to a reversionary interest in the United States if such land is used for any purpose other than port or industrial purposes. Such exchange shall also be subject to such other terms, conditions, reservations, and restrictions as the Secretary determines necessary for the development, maintenance, and operation of the Lower Granite Lock and Dam project referred to in subsection (a) and to protect the interests of the United States.

(c) **LEGAL DESCRIPTIONS AND SURVEYS.**—The exact acreages and legal descriptions of the lands exchanged under subsection (a) shall be determined by such surveys as the Secretary determines are necessary. The cost of such surveys shall be paid by the Port of Whitman County, Washington.

SEC. 30. LESAGE/GREENBOTTOM SWAMP, WEST VIRGINIA.

(a) **LIMITATION ON LAND CONVEYANCE.**—The Secretary shall not convey title to all or any part of the Lesage/Greenbottom Swamp to the State of West Virginia.

(b) **LESAGE/GREENBOTTOM SWAMP DEFINED.**—For purposes of this section, the term "Lesage/Greenbottom Swamp" means the land located in Cabell and Mason Counties, West Virginia, acquired or to be acquired by the United States for fish and wildlife mitigation purposes in connection with the Gallipolis Locks and Dam replacement project authorized by section 301(a) of the Water Resources Development Act of 1986 (100 Stat. 4110).

(c) **LIMITATION ON STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed as affecting the authority of the Secretary to carry out the Gallipolis Locks and Dam replacement project authorized by section 301(a) of the Water Resources Development Act of 1986 (100 Stat. 4110).

SEC. 31. PORTUGUESE AND BUCANA RIVERS, PUERTO RICO.

The Secretary is authorized to pay tuition expenses of suitable, English-taught primary and secondary education in Puerto Rico for the child or children of any Federal employee when such expenses are incurred after the date of the enactment of this Act and while the employee is temporarily residing and employed in Puerto Rico for the construction of the Portuguese and Bucana Rivers, Puerto Rico, project.

SEC. 32. ALTERNATIVES TO MUD DUMP FOR DISPOSAL OF DREDGED MATERIAL.

Section 211 of the Water Resources Development Act of 1986 (100 Stat. 4106; 33 U.S.C. 2239) is amended by redesignating subsections (d), (e), (f), and (g), and any references thereto, as subsections (e), (f),

, and (h), respectively, and by inserting after subsection (c) the following new subsection:

“(d) DESIGNATION PLAN.—Not later than 120 days after the date of the enactment of the Water Resources Development Act of 1988, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives his plan for designating one or more sites under subsection (a). The plan shall specify the actions necessary to comply with subsection (a), the funding requirements associated with these actions, and the dates by which the Administrator expects to complete each of these actions. The plan also shall specify actions which the Administrator may be able to take to expedite the designation of any sites under subsection (a).”.

SEC. 33. MISSOURI RIVER BETWEEN FORT PECK DAM, MONTANA, AND GAVINS POINT DAM, SOUTH DAKOTA AND NEBRASKA.

Section 9 of the Act entitled “An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes”, approved December 22, 1944 (58 Stat. 891), is amended by adding at the end thereof the following new subsection:

“(f) The Secretary of the Army is directed to undertake such measures, including maintenance and rehabilitation of existing structures, which the Secretary determines are needed to alleviate bank erosion and related problems associated with reservoir releases along the Missouri River between Fort Peck Dam, Montana, and a point 58 miles downstream of Gavins Point Dam, South Dakota, and Nebraska. The cost of such measures may not exceed \$1,000,000 per fiscal year. Notwithstanding any other provision of law, the costs of these measures, including the costs of necessary real estate interests and structural features, shall be apportioned among project proposes as a joint-use operation and maintenance expense. In lieu of structural measures, the Secretary may acquire interests in affected areas, as the Secretary deems appropriate, from willing sellers.”.

SEC. 34. NEW YORK HARBOR DRIFT REMOVAL PROJECT.

Section 91 of the Water Resources Development Act of 1974 (88 Stat. 39) is amended by striking out “\$30,500,000” and inserting in lieu thereof “\$6,000,000 annually”.

SEC. 35. PLACEMENT OF DREDGED BEACH QUALITY SAND ON BEACHES.

Section 145 of the Water Resources Development Act of 1976 (33 U.S.C. 426j) is amended by adding at the end thereof the following new sentence: “In carrying out this section, the Secretary shall give consideration to the State’s schedule for providing its share of funds for placing such sand on the beaches of such State and shall, to the maximum extent practicable, accommodate such schedule.”.

State and local
governments.

SEC. 36. RESTORATION, VENTURA TO PIERPONT BEACH, CALIFORNIA.

The Secretary shall make such emergency repairs as are required to restore groin number 1 of the Ventura to Pierpont Beach erosion control project to its original configuration as authorized pursuant to House Document 87-458, except that the Federal cost shall not exceed \$300,000.

California.

SEC. 37. WILLIAM G. STONE LOCK TOLLS.

Section 1150(b) of the Water Resources Development Act of 1986 (100 Stat. 4255) is amended by striking out "Yolo County, California" and inserting in lieu thereof the following: "the city of West Sacramento, California".

33 USC 59j-1.

SEC. 38. DECLARATION OF NONNAVIGABILITY FOR PORTIONS OF THE DELAWARE RIVER.

Pennsylvania.

(a) **AREA TO BE DECLARED NON-NAVIGABLE; PUBLIC INTEREST.**— Unless the Secretary finds, after consultation with local and regional public officials (including local and regional public planning organizations), that the proposed projects in Philadelphia, Pennsylvania, to be undertaken within the boundaries described below, are not in the public interest then, subject to subsections (b) and (c) of this section, those portions of the Delaware River, bounded and described as follows, are declared to be non-navigable waters of the United States:

(1) LIBERTY LANDING.**Description of Pier 53 South**

All that certain lot or piece of ground together with the improvements thereon erected, situate in the 1st ward of the city of Philadelphia and described according to a plan of property by John Stefanco, Surveyor and Regulator of the Second Survey District, dated November 4, 1974 and revised December 18, 1974:

Beginning at an interior point formed by the intersection of the following two courses and distances: (1) north 14 degrees 46 minutes 39 seconds east, the distance of 781.002 feet northwardly from the northerly side of Reed Street (50 feet wide bearing south 75 degrees 13 minutes 21 seconds east); (2) south 75 degrees 20 minutes 21 seconds east, the distance of 231.805 feet eastwardly from the easterly side of Delaware Avenue (150 feet wide bearing north 14 degrees 39 minutes 39 seconds east); thence extending from said point of beginning, north 0 degree 49 minutes 15 seconds west, the distance of 160.856 feet to a point; thence extending north 79 degrees 53 minutes 04 seconds east, the distance of 24.808 feet to a point; thence extending north 10 degrees 03 minutes west, the distance of 15.0 feet to a point; thence extending south 79 degrees 53 minutes 04 seconds west, the distance of 22.723 feet to a point; thence extending north 4 degrees 56 minutes 56 seconds west, the distance of 99.228 feet to a point; thence extending south 80 degrees 53 minutes 04 seconds west, the distance of 7.0 feet to a point on an arc; thence extending along an arc curving to the right having a radius of 698.835 feet, a central angle of 11 degrees 29 minutes 44 seconds, an arc distance of 140.211 feet to a point of tangency; thence extending north 0 degree 44 minutes 16 seconds west, the distance of 57.302 feet to a point on the former centre line of former Washington Avenue (100 feet wide); thence extending along the said centre line of former Washington Avenue and crossing the bed of a 30-foot-wide private driveway and the bulkhead line, (approved by the Secretary of War, September 10, 1940); south 75 degrees 13 minutes 21 seconds east, the distance of 940.350 feet to a point on the pierhead line (approved by the Secretary of War, September 10, 1940); thence extending along the said pierhead line, south 1 degree 32 minutes 57 seconds east, the distance of 422.516 feet to a point; thence extending north 75 degrees 13 minutes 21 seconds west, recrossing the said

alkhead line; the distance of 690.031 feet to a point; thence extending north 6 degrees 35 minutes 30 seconds west, the distance of 338 feet to a point; thence extending south 79 degrees 54 minutes west, the distance of 19.120 feet to a point; thence extending south 79 degrees 6 minutes east, the distance of 4.10 feet to a point; thence extending south 79 degrees 54 minutes west, and crossing the bed of the aforementioned 30-foot-wide private driveway, the distance of 6.802 feet to the First mentioned point and place of beginning. Containing in total area 374,026.6 square feet—8.58647 acres description of 30-foot-wide private driveway within the property of Parcel 53 south.

All that certain lot or piece of ground described as a 30-foot-wide private driveway as shown on a plan of property, situate in the 1st ward of the city of Philadelphia, by John Stefanco, Surveyor and Regulator of the Second Survey District, dated November 4, 1974 and revised December 18, 1974.

Beginning at an interior point formed by the intersection of the following 2 courses and distances: (1) north 14 degrees 46 minutes 39 seconds east, the distance of 802.293 feet northwardly from the northerly side of Reed Street (50 feet wide bearing south 75 degrees 21 minutes 21 seconds east), (2) south 75 degrees 20 minutes 21 seconds east, the distance of 277.764 feet eastwardly from the easterly side of Delaware Avenue (150 feet wide bearing north 14 degrees 39 minutes 39 seconds east); thence extending from said point of beginning north 10 degrees 3 minutes west, the distance of 3.758 feet to a point; thence extending north 14 degrees 52 minutes 4 seconds east, the distance of 180.551 feet to a point; thence extending north 17 degrees 35 minutes 1 second west, the distance of 1.949 feet to a point on the centre line of former Washington Avenue (100 feet wide); thence extending along said former centre line of Washington Avenue, south 75 degrees 13 minutes 21 seconds west, the distance of 35.516 feet to a point; thence extending south 17 degrees 35 minutes 1 second east, the distance of 91.669 feet to a point; thence extending south 14 degrees 52 minutes 4 seconds west, the distance of 182.653 feet to a point; thence extending south 10 degrees 3 minutes east, the distance of 167.104 feet to a point; thence extending south 79 degrees 54 minutes west, the distance of 30.000 feet to the first mentioned point and place of beginning. Area of 30-foot-wide private driveway is 13,465.2 square feet—0.30912 acres.

All that certain lot or piece of ground with the buildings and improvements thereon erected, situate in the first ward of the city of Philadelphia and described according to a Plan of Property by Evans Sparks, Surveyor and Regulator of the Second Survey District, dated February 23, 1988 as follows: Parcel "A".

Beginning at a point on the easterly side of Delaware Avenue (150 feet wide), located northwardly the distance of 1,100 feet 7 $\frac{1}{2}$ inches from the point of intersection of the northerly side of Tasker Street (50 feet wide) and the easterly side of the said Delaware Avenue; thence extending north 14 degrees 39 minutes 39 seconds east along the said easterly side of Delaware Avenue, the distance of 975 feet 1 inch to an angle point; thence continuing along the said easterly side of Delaware Avenue north 14 degrees 35 minutes 09 seconds east, the distance of 50 feet 0 inch to a point on the center line of former Washington Avenue (100 feet wide), stricken from the city plan; thence extending south 75 degrees 14 minutes 21 seconds east along the center line of the said former Washington Avenue, the distance of 151 feet 4 $\frac{1}{2}$ inches to a point on the westerly side of a 30-

foot-wide driveway easement; thence extending south 17 degrees 35 minutes 01 second east along the said driveway easement, the distance of 102 feet 0 inch to an angle point; thence continuing along the said driveway easement south 14 degrees 52 minutes 04 seconds west, the distance of 180 feet 6 $\frac{5}{8}$ inches to an angle point; thence still continuing along the said driveway easement south 10 degrees 03 minutes 00 seconds east, the distance of 131 feet 7 $\frac{1}{8}$ inches to a point; thence extending south 14 degrees 39 minutes 39 seconds west along a line, the distance of 638 feet 11 inches to a point; thence extending north 75 degrees 14 minutes 21 seconds west, along a line, the distance of 260 feet 1 $\frac{1}{2}$ inches to a point on the easterly side of said Delaware Avenue, being the first mentioned point and place of beginning.

Containing in area 246,456 square feet or 5.6579 acres.

All that certain lot or piece of ground with the buildings and improvements thereon erected, situate in the first ward of the city of Philadelphia and described according to a Plan of Property by Evans Sparks, Surveyor and Regulator of the Second Survey District, dated February 23, 1988 as follows: Parcel "B".

Beginning at a point on the easterly side of Delaware Avenue (150 feet wide), located northwardly the distance of 1,038 feet 1 $\frac{7}{8}$ inches from the point of intersection of the northerly side of Tasker Street (50 feet wide) and the easterly side of the said Delaware Avenue; thence extending north 14 degrees 39 minutes 39 seconds east along the said easterly side of Delaware Avenue, the distance of 62 feet 5 $\frac{1}{2}$ inches to a point; thence extending south 75 degrees 14 minutes 21 seconds east along a line, the distance of 260 feet 1 $\frac{1}{2}$ inches to a point; thence extending north 14 degrees 39 minutes 39 seconds east along a line, the distance of 638 feet 11 inches to a point on the westerly side of a 30 feet wide driveway easement; thence extending south 10 degrees 03 minutes 00 seconds east along the said driveway easement, the distance of 42 feet 2 inches to a point; thence extending north 79 degrees 54 minutes 00 seconds east crossing the said driveway easement, the distance of 146 feet 2 $\frac{1}{2}$ inches to a point; thence extending north 10 degrees 06 minutes 00 seconds west, the distance of 4 feet 1 $\frac{1}{4}$ inches to a point; thence extending north 79 degrees 54 minutes 00 seconds east, the distance of 19 feet 1 $\frac{1}{2}$ inches to a point; thence extending south 6 degrees 35 minutes 30 seconds east, the distance of 58 feet 4 $\frac{1}{8}$ inches to a point; thence extending south 75 degrees 13 minutes 21 seconds east, crossing the bulkhead line approved by the Secretary of War, September 10, 1940; August 9, 1909, and January 20, 1891, the distance of 690 feet 1 $\frac{5}{8}$ inches to a point on the pierhead line of the Delaware River approved by the Secretary of War, September 10, 1940; August 9, 1909, and January 20, 1891; thence extending along the said pierhead line south 1 degree 32 minutes 57 seconds east, the distance of 386 feet 4 $\frac{1}{8}$ inches to a point; thence continuing along the said pierhead line, south 8 degrees 55 minutes 55.5 seconds east, the distance of 491 feet 11 $\frac{1}{4}$ inches to a point on the northerly side of Reed Street (50 feet wide) stricken from city plan and vacated and reserved as a right-of-way for drainage, water main and gas purposes; thence extending along same, north 75 degrees 13 minutes 21 seconds west, recrossing the said bulkhead line and 30-foot-wide driveway easement the distance of 632 feet 1 $\frac{1}{2}$ inches to a point on the westerly side of said driveway easement; thence extending north 12 degrees 24 minutes 31 seconds west, along said driveway easement, the distance of 136 feet 0 $\frac{1}{4}$ inch to a point; thence extending north 14 degrees 50 minutes 59 seconds

t, partly along a 25-foot-wide driveway easement, the distance of feet $0\frac{1}{4}$ inch to a point; thence extending north 75 degrees 13 minutes 21 seconds west, the distance of 492 feet $11\frac{3}{4}$ inches to a point; thence extending south 14 degrees 46 minutes 39 seconds west, the distance of 51 feet $3\frac{1}{8}$ inches to a point; thence extending north 64 degrees 29 minutes 30 seconds west, the distance of 259 feet $1\frac{1}{2}$ inches to the easterly side of said Delaware Avenue, being the last mentioned point and place of beginning.

Containing in area 785,683 square feet or 18.0368 acres.

2) MARINA TOWERS AND WORLD TRADE CENTER—PIER 25 NORTH. All that certain lot or piece of ground situate in the 5th ward, city of Philadelphia, Commonwealth of Pennsylvania, described in accordance with a Plan of Property made for Old City Harbor Associates Developers, by Lawrence J. Cleary, Surveyor and Regulator, Third Survey District dated March 26, 1981 as follows: to wit: Beginning at a point on the easterly line of Delaware Avenue (150 feet wide) located 27 degrees 52 minutes 00 seconds west, the distance of 119 feet $8\frac{1}{8}$ inches from a point of intersection of the easterly line of the said Delaware Avenue with the southerly line of Callowhill Street (50 feet wide) produced; thence extending along the easterly line of the said Delaware Avenue, the two following courses and distances: (1) north 27 degrees 52 minutes 00 seconds east, the distance of 162 feet $8\frac{1}{8}$ inches to an angle point; (2) north 15 degrees 00 minutes 00 seconds east, the distance of 95 feet $5\frac{1}{8}$ inches to a point; thence extending south 73 degrees 55 minutes 50 seconds east, the distance of 18 feet $5\frac{1}{8}$ inches to a point on the bulkhead line of the Delaware River approved by the Secretary of War September 10, 1940; thence further extending south 73 degrees 55 minutes 50 seconds east, the distance of 515 feet $9\frac{1}{8}$ inches to a point on the bulkhead line of the Delaware River approved by the Secretary of War September 10, 1940; thence extending the following two courses and distances along the said pierhead line of the Delaware River approved by the Secretary of War September 10, 1940: (1) south 29 degrees 05 minutes 21 seconds west, the distance of 133 feet $8\frac{1}{8}$ inches to an angle point; (2) south 19 degrees 41 minutes 36 seconds west, the distance of 117 feet $2\frac{1}{2}$ inches to a point; thence extending north 74 degrees 44 minutes 00 seconds west, the distance of 504 feet $1\frac{1}{2}$ inches to a point on the said bulkhead line of the Delaware River approved by the Secretary of War September 10, 1940; thence further extending north 74 degrees 44 minutes 00 seconds west, the distance of 23 feet $10\frac{1}{8}$ inches to the first mentioned point and place of beginning.

Being parcels number 1 (known as pier 25 north), number 2 and number 3 and containing in total area 130,281.6 square feet.

3) MARINE TRADE CENTER—PIER 24 NORTH.

Description of a property located on the easterly side of Delaware Avenue. Northwardly from the south house line of Callowhill Street produced (pier numbered 24 north).

All that certain lot or piece of ground situate in the fifth ward of the city of Philadelphia and described in accordance with a Survey and Plan of Property made November 16, 1985 by Lawrence J. Cleary, Surveyor and Regulator, Third Survey District, and revised March 22, 1988 by him.

Beginning at a point of intersection of the easterly side of Delaware Avenue (150 feet wide) and the south house line of Callowhill Street (formerly 50 feet wide) produced; thence extending north 27 degrees 52 minutes 00 seconds east along the said side of Delaware

Avenue, the distance of 340 feet 3 inches to a point; thence extending south 74 degrees 44 minutes 00 seconds east the distance of 23 feet 10½ inches to a point on the bulkhead line of the Delaware River approved by the Secretary of War, September 10, 1940; thence extending south 74 degrees 44 minutes 00 seconds east the distance of 528 feet 8½ inches to a point on the pierhead line of the Delaware River approved by the Secretary of War, September 10, 1940; thence extending south 19 degrees 41 minutes 36 seconds west along the said pierhead line the distance of 289 feet 9½ inches to a point on the said south house line of Callowhill Street produced; thence extending north 78 degrees 58 minutes 50 seconds west along the south house line of said Callowhill Street produced the distance of 522 feet 8¾ inches to a point on the said bulkhead line; thence continuing along the said south house line of Callowhill Street produced north 78 degrees 58 minutes 50 seconds west the distance of 59 feet 5¼ inches to the first mentioned point and place of beginning.

Containing in area 171,171 square feet (3.9295 acres).

(4) NATIONAL SUGAR COMPANY "SUGAR HOUSE".

Description and Recital—block 6 north 6 lot 17—all that certain land.

Situate in the 5th ward of the city of Philadelphia, Pennsylvania and more particularly described as follows:

Beginning at a point on the southeasterly side of Penn Street (60 feet wide) which point is measured south 43 degrees 30 minutes west along the said southeasterly side of Penn Street the distance of 282 feet 6 inches from a point formed by an intersection of the said southeasterly side of Penn Street and the southwesterly side of Laurel Street (50 feet wide); thence extending from said point of beginning south 46 degrees 30 minutes east the distance of 738 feet 8½ inches to a point on the Delaware River pierhead line established January 5, 1894, approved by Secretary of War September 10, 1940; thence extending south 48 degrees 13 minutes 7 seconds west along the Delaware River pierhead line the distance of 188 feet 3½ inches to a point; thence extending north 46 degrees 30 minutes west partly passing within the bed of a 10-foot-wide alley by deed (which extends northwestwardly to the said southeasterly side of Penn Street) the distance of 723 feet 2½ inches to a point on the said southeasterly side of Penn Street; thence extending north 43 degrees 30 minutes east along the said southeasterly side of Penn Street and crossing the bed of the said 10-foot-wide alley by deed the distance of 187 feet 7½ inches to a point, being the first mentioned point and place of beginning.

Containing 3.148 acres, more or less, as surveyed on June 29, 1981, by Lawrence J. Cleary, Surveyor and Regulator of the 3rd District.

Together with 1,736 linear feet of track thereupon erected, made or being and all and every of the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging, or in anywise appertaining. Being known as pier 40 north.

Being the same premises which Ralph Heller, an individual by deed dated November 4, 1981, and recorded in Philadelphia County, in deed book EFP 345 page 531 conveyed unto pier 40 north associates, a Penna. Limited partnership, its successors and assigns, as partnership property for the uses and purposes of said partnership.

Description of piers 41, 42, and 43 north

All that certain lot or piece of ground situate in the fifth ward of the city of Philadelphia and described in accordance with a Geographic Survey and Plan of Property made May 23, 1988, by Lawrence J. Cleary, Surveyor and Regulator of the Third Survey District:

Beginning at the point formed by the intersection of the easterly side of Penn Street (60 feet wide), and the southerly side of former Laurel Street (50 feet wide), stricken and reserved for drainage; thence extending south 46 degrees 30 minutes 00 seconds east, along the said southerly side of former said Laurel Street, the distance of 9 feet 9 inches to a point on the bulkhead line established January 5, 1894, and approved by the Secretary of War, September 10, 1940; thence extending south 46 degree 30 minutes 00 seconds east the distance of 571 feet 3¼ inches to a point on the pierhead line established January 5, 1894, and approved by the Secretary of War, September 10, 1940; thence extending south 48 degrees 13 minutes 00 seconds west along the said pierhead line the distance of 283 feet 11 inches to a point; thence extending north 46 degrees 30 minutes 00 seconds west leaving said pierhead line the distance of 546 feet 11 inches to a point on the aforementioned bulkhead line established January 5, 1894, and approved by the Secretary of War, September 10, 1940; thence extending north 46 degrees 30 minutes 00 seconds west the distance of 191 feet 8¾ inches to a point on the easterly side of said Penn Street; thence extending north 43 degrees 00 minutes 00 seconds east along the easterly side of said Penn Street the distance of 282 feet 6 inches to the first mentioned point of place of beginning.

Description of piers 44 to 50 north, inclusive

All that certain lot or piece of ground situate in the fifth ward of the city of Philadelphia and described in accordance with a Survey and Plan of Property made March 7, 1985 by Lawrence J. Cleary, Surveyor and Regulator of the Third Survey District:

Beginning at a point of intersection formed by the northeasterly side of Shackamaxon Street (60 feet wide) and the southeasterly side of Penn Street (50 feet wide); thence extending south 22 degrees 26 minutes 57 seconds east along the northeasterly side of the bed of former Shackamaxon Street (reserved for drainage purposes), the distance of 170 feet 8¾ inches to a point on the bulkhead line of the Delaware River (established January 5, 1894—approved by the Secretary of War, September 10, 1940); thence further extending south 22 degrees 26 minutes 57 seconds east along the northeasterly side of the bed of former Shackamaxon Street (subject to a right-of-way for pier maintenance as provided in ordinance), the distance of 623 feet 6¾ inches to a point on the pierhead line of the Delaware River established January 5, 1894—approved by the Secretary of War, September 10, 1940); thence extending south 54 degrees 04 minutes 00 seconds west along the said pierhead line (being also the southeasterly head of the said former Shackamaxon Street), the distance of 11 feet 8¾ inches to an angle point; thence extending south 48 degrees 11 minutes 38 seconds west along the said pierhead line the distance of 385 feet 11½ inches to a point on the northeasterly side of Laurel Street (50 feet wide) produced; thence extending north 46 degrees 29 minutes 00 seconds west along the northeasterly side of

the said Laurel Street produced, the distance of 575 feet 6 $\frac{7}{8}$ inches to a point on the said bulkhead line; thence further extending north 46 degrees 29 minutes 00 seconds west along the northeasterly side of the said Laurel Street, the distance of 190 feet 7 inches to a point on the southeasterly side of Penn Street (60 feet wide); thence extending north 43 degrees 30 minutes 00 seconds east along the southeasterly side of the aforesaid Penn Street, the distance of 543 feet 0 $\frac{3}{4}$ inch to an angle point; thence extending north 63 degrees 51 minutes 33 seconds east along the southeasterly side of said Penn Street (50 feet wide), the distance of 240 feet 9 inches to the first mentioned point and place of beginning.

(5) RIVERCENTER.

Beginning at the point of intersection of the northeasterly side of Dyott Street (100 feet wide) with the bulkhead line established by the Secretary of War, September 10, 1940; thence from said point of beginning leaving the side of Dyott Street and extending along the bulkhead line the following five (5) courses and distances—

(1) north 64 degrees 18 minutes 09 seconds east 829 feet 10 inches to a point;

(2) south 48 degrees 30 minutes 57 seconds east 53 feet 5 $\frac{1}{2}$ inches to a point;

(3) north 64 degrees 40 minutes 52 seconds east 936 feet 8 $\frac{1}{2}$ inches to a point;

(4) north 32 degrees 24 minutes 26 seconds west 149 feet 2 $\frac{1}{4}$ inches to a point;

(5) north 64 degrees 04 minutes 09 seconds east crossing a 60 foot drainage right-of-way 296 feet 3 $\frac{3}{4}$ inches to a point on the southwesterly side of pier #20;

thence extending along said southwesterly side of pier #20 15 feet distant and parallel with the aforementioned drainage right-of-way south 25 degrees 02 minutes 08 seconds east 586 feet 6 $\frac{3}{8}$ inches to a point on the pierhead line established by the Secretary of War, September 10, 1940; thence extending along the pierhead line south 64 degrees 16 minutes 52 seconds west 2,021 feet 10 inches to a point on the northeasterly side of Dyott Street; thence extending along said northeasterly side of Dyott Street north 30 degrees 02 minutes 52 seconds west 494 feet 9 $\frac{3}{8}$ inches to the point and place of beginning.

The Secretary shall make the public interest determination separately for each proposed project, using reasonable discretion, within 150 days after submission of appropriate plans for each proposed project.

(b) LIMITS ON APPLICABILITY; REGULATORY REQUIREMENTS.—The declaration under subsection (a) shall apply only to those parts of the areas described in subsection (a) of this section which are or will be bulkheaded and filled or otherwise occupied by permanent structures, including marina facilities. All such work is subject to all applicable Federal statutes and regulations, including, but not necessarily limited to, sections 9 and 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401 and 403), commonly known as the River and Harbors Appropriation Act of 1899, section 404 of the Federal Water Pollution Control Act, and the National Environmental Policy Act of 1969.

(c) EXPIRATION DATE.—If, 20 years from the date of the enactment of this Act, any area or part thereof described in subsection (a) of this section is not bulkheaded or filled or occupied by permanent structures, including marina facilities, in accordance with the

requirements set out in subsection (b) of this section, or if work in connection with any activity permitted in subsection (b) is not commenced within 5 years after issuance of such permits, then the declaration of non-navigability for such area or part thereof shall terminate.

39. DECLARATION OF NONNAVIGABILITY FOR PORTIONS OF CONEY ISLAND CREEK AND GRAVESEND BAY, NEW YORK.

33 USC 59y.

(A) AREA TO BE DECLARED NON-NAVIGABLE; PUBLIC INTEREST.—Unless the Secretary finds, after consultation with local and regional public officials (including local and regional public planning organizations), that the proposed projects to be undertaken within the boundaries in the portions of Coney Island Creek and Gravesend Bay, New York, described below, are not in the public interest then, subject to subsections (b) and (c) of this section, those portions of Coney Island Creek and Bay, bounded and described as follows, are declared to be non-navigable waters of the United States:

Beginning at the corner formed by the intersection of the westerly line of Cropsey Avenue, and the Northernmost United States Pierhead Line of Coney Island Creek.

Running thence south 12 degrees 41 minutes 03 seconds E and along the westerly line of Cropsey Avenue, 98.72 feet to the northerly channel line as shown on Corps of Engineers Map Numbered F. 150 and on Survey by Rogers and Giolorenzo Numbered 13959 dated October 31, 1986.

Running thence in a westerly direction and along the said northerly channel line the following bearings and distances:

South 48 degrees 59 minutes 27 seconds west, 118.77 feet; south 37 degrees 07 minutes 01 seconds west, 232.00 feet; south 23 degrees 17 minutes 10 seconds west, 430.03 feet; south 31 degrees 25 minutes 46 seconds west, 210.95 feet; south 79 degrees 22 minutes 49 seconds west, 244.18 feet; north 55 degrees 00 minutes 29 seconds west, 183.10 feet; north 41 degrees 47 minutes 04 seconds west, 315.16 feet;

North 41 degrees 17 minutes 43 seconds west, 492.47 feet to the said Pierhead Line; thence north 73 degrees 58 minutes 40 seconds west and along said pierhead line, 2,665.25 feet to the intersection of the United States bulkhead line;

Thence north 0 degree 19 minutes 35 seconds west and along the United States Bulkhead line 1,138.50 feet to the intersection of the westerly prolongation of the center line of 26th Avenue,

Thence north 58 degrees 25 minutes 06 seconds east and along the center line of said 26th Avenue, 2,320.85 feet to the westerly line of Cropsey Avenue, then southeasterly and along the southerly line of Cropsey Avenue the following bearings and distances:

South 31 degrees 34 minutes 54 seconds east, 4,124.59 feet; and

South 12 degrees 41 minutes 03 seconds east, 710.74 feet to the point or place of beginning.

Coordinates and bearings are in the system as established by the United States Coast and Geodetic Survey for the Borough of Brooklyn. The Secretary shall make the public interest determination separately for each proposed project, using reasonable discretion, within 150 days after submission of appropriate plans for each proposed project.

(b) **LIMITS ON APPLICABILITY; REGULATORY REQUIREMENTS.**—The declaration under subsection (a) shall apply only to those parts of the areas described in subsection (a) of this section which are or will be bulkheaded and filled or otherwise occupied by permanent structures, including marina facilities. All such work is subject to all applicable Federal statutes and regulations, including, but not necessarily limited to, sections 9 and 10 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401 and 403), commonly known as the River and Harbors Appropriation Act of 1899, section 404 of the Federal Water Pollution Control Act, and the National Environmental Policy Act of 1969.

(c) **EXPIRATION DATE.**—If, 20 years from the date of the enactment of this Act, any area or part thereof described in subsection (a) of this section is not bulkheaded or filled or occupied by permanent structures, including marina facilities, in accordance with the requirements set out in subsection (b) of this section, or if work in connection with any activity permitted in subsection (b) is not commenced within 5 years after issuance of such permits, then the declaration of non-navigability for such area or part thereof shall expire.

SEC. 40. EXTENSION OF MODIFIED WATER DELIVERY SCHEDULES, EVERGLADES NATIONAL PARK.

The first sentence of section 1302 of the Supplemental Appropriations Act, 1984 (97 Stat. 1292-1293) is amended by striking out “January 1, 1989” and inserting in lieu thereof “January 1, 1992”.

SEC. 41. PERIOD OF ENVIRONMENTAL DEMONSTRATION PROGRAM.

(a) **EXTENSION OF PERIOD.**—Section 1135(b) of the Water Resources Development Act of 1986 (33 U.S.C. 2294 note) is amended by striking out “two-year period” and inserting in lieu thereof “5-year period”.

(b) **REPORTS.**—Section 1135(d) of such Act is amended by striking out “two years” and inserting in lieu thereof “5 years”.

SEC. 42. FEDERAL HYDROELECTRIC POWER MODERNIZATION STUDY.

(a) **STUDY.**—The Secretary shall conduct a study of the need to modernize and upgrade the federally owned and operated hydroelectric power system.

(b) **REPORT.**—Not later than 2 years after the date of the enactment of this section, the Secretary shall transmit to Congress a report on the results of the study conducted under subsection (a) together with recommendations.

SEC. 43. WATER QUALITY EFFECTS OF HYDROELECTRIC FACILITIES.

(a) **STUDY.**—The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, shall undertake a study of the water quality effects of hydroelectric facilities owned and operated by the Corps of Engineers. Such study shall be transmitted to Congress within 2 years of the date of the enactment of this Act and shall consider and include information for each such Corps of Engineers hydroelectric facility pertaining to: relevant water quality standards including dissolved oxygen; water quality monitoring data; possible options and projected costs of measures required to improve the quality of water released from each such facility where justified; and recommendations with respect to such study results.

Energy.
42 USC 1962d-5g
note.

Energy.
42 USC 1962d-5g
note.

(b) **LIMITATIONS.**—Nothing in this section shall convey to any agency of the Federal Government any new authority with respect to the allocation or release of water from Federal reservoirs. Further, nothing in this section is designed or intended to affect any present or future legal actions or proceedings.

SEC. 44. GAO REVIEW OF CIVIL WORKS PROGRAM.

The Comptroller General of the United States General Accounting Office is authorized and directed to conduct a review of the Civil Works Program of the United States Army Corps of Engineers. This management and administration review shall be transmitted to Congress, together with any recommendations which the Comptroller General may make.

SEC. 45. DES PLAINES RIVER WETLANDS DEMONSTRATION PROJECT AUTHORIZATION.

Research and
development.
33 USC 2300
note.

(a) **RESTORATION OF WETLANDS.**—The Secretary is authorized to carry out a project to construct, and engage in other activities, necessary for the restoration of wetlands, of sufficient scale, for research and demonstration purposes adjacent to the Des Plaines River in Wadsworth, Illinois. The non-Federal interest shall agree—

(1) to provide, without cost to the United States, all lands, easements, and rights-of-ways necessary for construction and subsequent research and demonstration work;

(2) to hold and save the United States free from damages due to construction, operation, and maintenance of the project, except damages due to the fault or negligence of the United States or its contractors; and

(3) after the completion of the research work, to operate and maintain the restored wetlands in accordance with good management practices.

The value of the non-Federal lands, easements, rights-of-way, and relocations provided by the non-Federal interests, shall be credited toward the non-Federal share of project construction costs. The non-Federal share of project construction costs shall be 25 percent.

(b) **AUTHORIZATION OF APPROPRIATION.**—There are authorized to be appropriated to the Secretary \$2,200,000 for the period of fiscal years 1990 through 1994 to carry out this section.

(c) **PURPOSES.**—The project authorized by this section shall—

(1) define the wetland functions expected to be restored and maintained giving due consideration to site specific climatic, topographic, hydrologic, and edaphic conditions;

(2) conduct research to establish the critical relationships between the land, water, and biotic factors responsible for the defined wetland functions;

(3) establish and report design and construction procedures necessary to create the defined wetland functions throughout similar climatic areas and identify and report these wetland functions;

(4) create or restore sustainable wetlands which will serve as examples of the benefits and aesthetics of wetland landscapes; and

(5) secure the long-term commitment from a State or local agency for the maintenance of the wetlands following the research work.

(d) **REPORT.**—The Secretary shall report to Congress on the degree of progress achieved in carrying out the project under this section.

SEC. 46. KISSIMMEE RIVER, FLORIDA.

The Secretary is directed to proceed with work on the Kissimmee River demonstration project, Florida, pursuant to section 1135 of the Water Resources Development Act of 1986.

SEC. 47. WATER RESOURCES STUDIES.

Reports.

(a) **INTERNAL DRAINAGE SYSTEM, FROG POND AGRICULTURAL AREA, FLORIDA.**—The Secretary shall conduct a study for the purpose of determining the need for an internal drainage system in the Frog Pond agricultural area of south Dade County, Florida. Within 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a reconnaissance report on the need for such system.

Reports.

(b) **BARTLETT, ILLINOIS.**—Before issuing a permit under section 404 of the Federal Water Pollution Control Act for a proposed municipal landfill in the vicinity of Bartlett, Illinois, the Secretary shall consider the impact of such landfill on the Newark Valley Aquifer and on the ability of water from such Aquifer to dilute for purposes of drinking water supply naturally occurring radium in groundwater. Before issuing such permit, the Secretary shall consult with the Administrator of the Environmental Protection Agency with respect to the impact of such landfill on the Newark Valley Aquifer. Such consultation shall occur within 45 days after the date of the issuance, when and if made, of the Illinois water quality certification of such landfill pursuant to section 401 of such Act and shall include the Administrator's analysis of the permit record of the Illinois Environmental Protection Agency with respect to the water quality impacts of such landfill. Within 90 days of receiving a completed application for a permit under section 404 of such Act, including such Illinois water quality certification, the Secretary shall report to Congress on the impact of such landfill on the Newark Valley Aquifer. The provisions of this subsection shall not constitute an affirmative requirement for the Secretary to expand upon the existing permit record as prepared by the Illinois Environmental Protection Agency.

Reports.

(c) BLUESTONE LAKE, WEST VIRGINIA.—

(1) **IN GENERAL.**—The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to conduct a study and prepare a report on modifying the operation of the Bluestone Lake project, West Virginia, in order to facilitate the protection and enhancement of biological resources and recreational use of waters downstream from the project. Specific consideration shall be given in the study to all feasible means of improving flows from such project during periods when flows from the lake are less than 3,000 cubic feet per second, except that the study shall not consider project operation adjustments which entail major construction modifications at the project.

Federal Register, publication.

(2) **NOTICE AND COMMENTS.**—The Secretary shall publish notice of the proposed study under this subsection in the Federal Register within 3 months after the date of the enactment of this Act and shall consider any written comments regarding the scope of the study which are submitted during the 60-day period after publication of such notice.

(3) **FINAL REPORT.**—Not later than 18 months after the date of the enactment of this Act, the final report on the results of the study under this subsection shall be transmitted to Congress.

33 USC 988 note.

(d) GREAT LAKES AND SAINT LAWRENCE SEAWAY.—

(1) **STUDY OF FINANCING NAVIGATIONAL IMPROVEMENTS.**—The Secretary, in cooperation with other Federal agencies and private persons, is authorized and directed to contract with an independent party to conduct a study of cost recovery options and alternative methods of financing navigational improvements on the Great Lakes connecting channels and Saint Lawrence Seaway, including modernization of the Eisenhower and Snell Locks of the Saint Lawrence Seaway.

Contracts.

(2) **REPORT.**—Not later than 18 months after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study carried out under this subsection together with recommendations.

(3) **COST SHARING.**—The non-Federal share of the cost of the study under this subsection shall be 50 percent; except that not more than 1/2 of such non-Federal share may be made by the provision of services, materials, supplies, or other in-kind services necessary to carry out the study.

SEC. 48. DIVISION LABORATORY.

The Secretary is authorized to construct a new division laboratory at an estimated cost of \$2,400,000, for the United States Army Engineer Division, Ohio River. Such laboratory shall be constructed on a suitable site, which the Secretary is authorized to acquire for such purpose.

SEC. 49. WATER RESOURCES MANAGEMENT PLANNING SERVICE FOR THE HUDSON RIVER BASIN.

The Secretary is directed to establish a water resources management and planning service for the Hudson River Basin in New York and New Jersey. There is authorized to be appropriated \$400,000 annually for the purpose of providing the two States a full range of services for the development and implementation of State and local water resource initiatives.

Appropriation
authorization.

SEC. 50. TECHNICAL RESOURCE SERVICE, RED RIVER BASIN, MINNESOTA AND NORTH DAKOTA.

The Secretary is directed to establish a Technical Resource Service for the Red River Basin in Minnesota and North Dakota. There is authorized to be appropriated \$500,000 annually for the purpose of providing to such States a full range of technical services for the development and implementation of State and local water and related land resources initiatives within the Red River Basin and sub-basins. The Technical Resource Service is to be provided in addition to related services provided under authority of section 206 of the River and Harbor and Flood Control Act of 1960 and section 22 of the Water Resources Development Act of 1974.

Appropriation
authorization.

SEC. 51. CORRECTION OF DESCRIPTIONS.

(a) **HUDSON RIVER, NEW YORK.**—That portion of Public Law 100-202 designated as the Energy and Water Development Appropriation Act, 1988 is amended by striking out the undesignated paragraph beginning "The following portion of the Hudson River" and ending "the States of New York and New Jersey." (101 Stat. 1329-109) and inserting in lieu thereof the following:

"The following portion of the Hudson River in the Borough of Manhattan, New York County, State of New York, is hereby declared not to be part of the federally authorized Channel Deepen-

ing Project; that portion of the Hudson River and land thereunder more particularly bounded and described as follows: Beginning at a point in the United States Pierhead Line approved by the Secretary of War on July 31, 1941, such point having a coordinate of north 4,677.56 feet and west 11,407.92 feet and running: (1) northerly along such Pierhead Line on a bearing of north 21 degrees 01 minutes 53 seconds west for a distance of 700 feet to a point; thence (2) westerly at right angles to such Pierhead Line on a bearing of south 68 degrees 58 minutes 07 seconds west for a distance of 200 feet to a point; thence (3) southerly and parallel with such Pierhead Line on a bearing of south 21 degrees 01 minutes 53 seconds east for a distance of 700 feet to a point; thence (4) easterly at right angles to such Pierhead Line on a bearing of north 68 degrees 58 minutes 07 seconds east for a distance of 200 feet to the point of beginning. Bearings and coordinates are in the system used on the Borough Survey, Borough President's Office, Manhattan. This declaration shall apply to all or any part of such described area used or needed for New York harbor passenger ferry boat service as such may be operated by or contracted for operation by a bistate agency created by compact between the States of New York and New Jersey."

Compacts
between States.
New Jersey.

(b) MIANUS RIVER, CONNECTICUT.—Section 1006(b) of the Water Resources Development Act of 1986 (100 Stat. 4223) is amended—

(1) in paragraph (2) by striking out "coordinates N14296.251" and inserting in lieu thereof "coordinate: N14296.451"; and

(2) in paragraph (3)—

(A) by striking out "64 seconds West" and inserting in lieu thereof "54 seconds West"; and

(B) by striking out "coordinate: N13970.8" and inserting in lieu thereof "coordinate: N13970.81".

SEC. 52. PROJECT DEAUTHORIZATIONS.

(a) EXTENSION OF LIMITATION ON PERIOD OF AUTHORIZATION.—

(1) PROJECTS IN THIS ACT.—The provisions of section 1001(a) and section 1001(c) of the Water Resources Development Act of 1986 shall apply to the projects authorized for construction by this Act, except that the 5-year period during which funds must be obligated to prevent deauthorization shall begin on the date of the enactment of this Act.

(2) PROJECTS THEREAFTER.—The provisions of section 1001(a) and section 1001(c) of the Water Resources Development Act of 1986 shall also apply to projects authorized for construction subsequent to this Act, except that the 5-year period during which funds must be obligated to prevent deauthorization shall begin on the date of the authorization of such projects.

(b) SPECIFIED PROJECTS.—The following projects are not authorized after the date of the enactment of this Act, except with respect to any portion of such a project which portion has been completed before such date of enactment or is under construction on such date of enactment:

(1) ROCKLAND LAKE, TEXAS.—The Rockland Lake water resources project, Texas, authorized by section 2 of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public work on rivers and harbors, and for other purposes", approved March 2, 1945 (59 Stat. 18).

(2) WHITE RIVER NAVIGATION TO BATESVILLE, ARKANSAS.—The project for navigation, White River Navigation to Batesville,

Arkansas, authorized by section 601(a) of the Water Resources Development Act of 1986 (100 Stat. 4139).

(3) **CHICAGO RIVER TURNING BASIN, CHICAGO HARBOR, ILLINOIS.**—The inner basin of Chicago Harbor, Illinois, known as the Chicago River Turning Basin, authorized by the first section of the Act entitled “An Act making appropriations for the repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes, for the fiscal year ending June 30, 1871”, approved July 11, 1870 (16 Stat. 226).

(c) **ALGOMA, WISCONSIN, OUTER HARBOR.**—

(1) **DEAUTHORIZATION.**—Except as provided in paragraph (2), the outer harbor basin feature of the navigation project for Algoma, Wisconsin, authorized by the Act entitled “An Act making appropriations for construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved March 2, 1907 (34 Stat. 1101), is not authorized after the date of the enactment of this Act.

(2) **RETENTION OF MAINTENANCE RESPONSIBILITIES FOR BREAKWATERS AND CHANNEL.**—The Secretary shall retain all responsibilities of the Secretary existing on the date of the enactment of this Act for maintenance of the breakwaters and channel of the harbor at Algoma, Wisconsin.

(d) **CONTINUATION OF PROJECT AUTHORIZATIONS.**—Notwithstanding section 1001(b)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 579a(b)(1))—

State listing.

(1) the navigation project for Monterey Harbor (Monterey Bay), California, authorized by section 101 of the River and Harbor Act of 1960 (74 Stat. 483),

(2) the navigation project for the North Branch of the Chicago River, Illinois, authorized by the first section of the Act entitled “An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved July 24, 1946 (60 Stat. 636),

(3) the element of the Missouri River Basin Project authorized by section 228 of the River and Harbor Act of 1970, and

(4) the navigation project for the James River, Virginia, authorized by section 101 of the River and Harbor Act of 1962 (76 Stat. 1174),

shall remain authorized after December 31, 1989. Such projects and elements shall not be authorized for construction after the last day of the 5-year period beginning on the date of the enactment of this Act unless during such period funds have been obligated for construction, including planning and designing, of such projects and elements.

(e) **NOTICE.**—The Secretary shall publish in the Federal Register notice as to any project which would no longer have been authorized pursuant to the provisions of section 1001 of the Water Resources Development Act of 1986 or subsection (a) of this section but remains authorized due to enactment of law by Congress.

Federal
Register,
publication.

SEC. 53. NAMINGS.

(a) **VENTURA HARBOR.**—

(1) **DESIGNATION.**—The harbor commonly known as Ventura Marina, located in Ventura County, California, and adopted and authorized by section 101 of Public Law 90-483, shall hereafter be known and designated as “Ventura Harbor”.

California.

(2) **LEGAL REFERENCES.**—A reference in any law, map, regulation, document, record, or other paper of the United States to such Harbor shall be deemed to be a reference to “Ventura Harbor”.

Kentucky.

(b) **ELVIS STAHR HARBOR, PORT OF HICKMAN.**—

(1) **DESIGNATION.**—The harbor located on the Mississippi River at Hickman, Kentucky, known as the Port of Hickman, shall hereafter be known and designated as the “Elvis Stahr Harbor, Port of Hickman”.

(2) **LEGAL REFERENCE.**—A reference in any law, map, regulation, document, record, or other paper of the United States to such harbor shall hereafter be deemed to be a reference to the “Elvis Stahr Harbor, Port of Hickman”.

Tennessee.

(c) **ED JONES BOAT RAMP.**—

(1) **DESIGNATION.**—The boat ramp to be constructed on the Mississippi River in Lauderdale County, Tennessee, shall be known and designated as the “Ed Jones Boat Ramp”.

(2) **LEGAL REFERENCE.**—A reference in any law, map, regulation, document, record, or other paper of the United States to such boat ramp shall be deemed to be a reference to the “Ed Jones Boat Ramp”.

33 USC 59z.

SEC. 54. DECLARATION OF NONNAVIGABILITY OF BODIES OF WATER IN RIDGEFIELD, NEW JERSEY.

The three bodies of water located at block 4004, lots 1 and 2, and block 4003, lot 1, in the Borough of Ridgefield, County of Bergen, New Jersey, which have their mouths at the Hackensack River at 40 degrees 49 minutes 58 seconds north latitude and 74 degrees 01 minute 46 seconds west longitude, 40 degrees 49 minutes 46 seconds north latitude and 74 degrees 01 minute 55 seconds west longitude, and 40 degrees 49 minutes 35 seconds north latitude and 74 degrees 02 minutes 04 seconds west longitude, respectively, and the body of water located at block 4006, lot 1, in the Borough of Ridgefield, County of Bergen, New Jersey, which has its mouth at the Hackensack River at 40 degrees 49 minutes 15 seconds north latitude and 74 degrees 01 minute 52 seconds west longitude, are declared to be nonnavigable waterways of the United States within the meaning of the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) and section 9 of the Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401), commonly known as the River and Harbors Appropriation Act of 1899.

Approved November 17, 1988.

LEGISLATIVE HISTORY—S. 2100 (H.R. 5247):

HOUSE REPORTS: No. 100-913 accompanying H.R. 5247 (Comm. on Public Works and Transportation) and No. 100-1098 (Comm. of Conference).

SENATE REPORTS: No. 100-313 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 134 (1988):

April 26, considered and passed Senate.

Sept. 30, H.R. 5247 considered and passed House; proceedings vacated and S. 2100, amended, passed in lieu.

Oct. 20, Senate agreed to conference report.

Oct. 20, 21, House considered and agreed to conference report.

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